

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0119**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115343). Claimant filed a timely request for hearing. On January 22, 2016, ALJ Shoemake conducted a hearing, and on January 25, 2016 issued Hearing Decision 16-UI-51647, affirming the Department's decision. On February 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Automated Batting Cages Corporation employed claimant as a service technician from September 1, 2005 to December 10, 2015.

(2) On December 9, 2015, the employer's manager notified claimant that the employer had sold its business. The sale was scheduled to become effective January 1, 2016.

(3) The new owners decided to retain all the employees except claimant. Although no one specifically told claimant he would be discharged effective January 1, 2016, claimant correctly understood that the new owners would not continue to employ him after they assumed ownership of the business, and that his employment would end on December 31, 2015.

(4) Claimant felt upset that his employment was going to end. He was also upset that the employer's manager had not convinced the new owners to retain him as an employee, since the manager had assured claimant in the past that he would look out for claimant in the event of a sale and that claimant should not worry. Claimant abruptly left work on December 9, 2015.

(5) On December 10, 2015, claimant returned to the workplace to finish some work and collect his belongings. Just before leaving, claimant went to the manager, threw his keys down and said, "Way to look out for employees, thanks for nothing," or words to that effect. Audio recording at ~7:26. He

thought his time would be better spent seeking a new job that would give him “a future” than continuing to work for the employer knowing his employment would soon end. Audio recording at ~10:10.

(6) Had claimant not chosen to leave work on December 10, 2015, continuing work was available for claimant. He would likely have worked until December 23, 2015, after which he would likely have taken December 24, 2015 through New Year’s Day off work. Although claimant was unlikely to perform services after December 23, 2015, his employment was not expected to end until December 31, 2015.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant voluntarily left work without good cause.

Claimant did not dispute that walked off the job on December 10, 2015, but argued that ORS 657.176(7)<sup>1</sup> applied to his case because he quit work within 15 days of the new owners’ planned discharge. Consequently, claimant argued, his work separation should be treated as though his voluntary quit had not occurred and the planned discharge had, thus qualifying him for benefits starting with the week prior to the week in which the planned discharge would have occurred. In support of his argument that his quit occurred within 15 days of a planned discharge, claimant explained that the 15-day period began when he quit on December 10<sup>th</sup>, and, because his last day of work would have occurred on December 23<sup>rd</sup>, after which he would have begun a planned vacation, the 15-day period should end on December 23<sup>rd</sup>, only 13 days later.

Claimant is correct that fewer than 15 days lapsed between the day he quit and the last day he was likely to have performed services, but for purposes of determining whether claimant quit or was discharged, the term “work” does not refer to days claimant was scheduled to perform services for the employer, it means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (August 3, 2011). Since the preponderance of the evidence is that claimant’s planned discharge would not have occurred until December 31<sup>st</sup>, the day before the sale that triggered his work separation was effective, a continuing relationship would have continued to exist until that planned discharge occurred. Therefore, even though claimant was not scheduled to work after December 24<sup>th</sup>, the relationship between claimant and the employer was expected to continue through December 31, 2015. There are 21

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<sup>1</sup> ORS 657.176(7) states: [F]or purposes of applying subsection (2) of this section, when an employer has notified an individual that the individual will be discharged on a specific date and it is determined that:

- (a) The discharge would not be for reasons that constitute misconduct connected with the work;
- (b) The individual voluntarily left work without good cause prior to the date of the impending discharge; and
- (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge,

then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the voluntary leaving occurred through the week prior to the week in which the individual would have been discharged.

days between December 10, 2015 and December 31, 2015, which exceeds the 15-day period set forth in ORS 657.176(7), so that law does not apply to claimant's case.

Claimant's employment ended on December 10, 2015 because he walked off the job. Because he could have continued to "work" for the same employer for an additional period of time, through December 31, 2015, his work separation must be considered a voluntary leaving. See OAR 471-030-0038(2)(a). A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

Claimant quit work in part because he was upset that the new owners were not going to continue his employment after December 31<sup>st</sup>. Claimant did not allege or show that any situation of gravity prompted his decision to quit work. For example, he did not allege or show that his working conditions changed, much less became intolerable, after he concluded that his employment would end. He did not allege that suffering a discharge would stigmatize him for purposes of seeking or finding a new job. He did not claim that quitting work under the circumstances served to improve his situation in any way. Absent evidence that claimant's working conditions were grave or that he improved his situation by quitting work, we cannot conclude that claimant quit work for a grave reason such that he had no reasonable alternatives but to leave. We therefore conclude that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have concluded that the new owners' decision to end his employment necessitated that he leave work, and would not have left work under the conditions claimant described.

Claimant also quit work, in part, because he thought his time was better spent seeking work that would give him a future than continuing to work for the employer in a job that he knew was scheduled to end. However, OAR 471-030-0038(5)(b) provides that quitting suitable work to seek other work is leaving work without good cause. Notably, claimant did not allege or show that his work for the employer was unsuitable for him in any way.

For those reasons, claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-51647 is affirmed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, not participating.

**DATE of Service:** February 24, 2016

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. See ORS 657.282. For forms and

information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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