

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0152

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 122440). Claimant filed a timely request for hearing. On January 27, 2016, ALJ Frank conducted a hearing, and on January 29, 2016, issued Hearing Decision 16-UI-51961, affirming the administrative decision. On February 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record.

FINDINGS OF FACT: (1) Moonlight Mailing, a printing and mailing business, employed claimant as an estimator from December 1 through December 8, 2015.

(2) When claimant interviewed with the employer for the estimator position, the employer told him he would be paid \$15 per hour. The employer discussed job duties with claimant during this interview, but did not provide claimant with a job description.

(3) On December 4, 2015, the employer's operations manager gave claimant a job description. Claimant was dissatisfied with the job description, and the operations manager revised the job description to address some of claimant's concerns. The job description provided that claimant would work as an estimator, customer service representative and sales person; the description specified that claimant would be paid \$15 per hour for these duties, and specified that he had the potential of earning commission on any sales he was able to make. Claimant believed that \$15 per hour was an insufficient wage for these job duties. Claimant also believed, based on his experience in the industry, that a wage of \$18-20 per hour was appropriate for the type of work the employer expected him to perform.

(4) On December 7, 2015, claimant reported for work and told the operations manager he wanted more than \$15 per hour for the work the employer expected him to perform. After consulting with another manager, the employer offered claimant \$18 per hour, but told claimant that he would receive no future

wage increases. Claimant indicated his willingness to accept this wage, but told the employer he could not come back to work until December 9, 2015.

(5) Late in the evening of December 8, 2015, claimant sent the employer an email in which he quit his job. Claimant voluntarily left work because he believed that the employer provided him no future opportunity to increase his wages. Audio at 14:57.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

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) (August 3, 2011). 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 voluntarily left work for the employer because he believed that the employer offered him no future opportunity to increase this wage. Claimant was incorrect in this assumption. The employer offered him a position in which claimant had the potential of earning commission on any sales he was able to make. A reasonable and prudent person, exercising ordinary common sense, would have confirmed the arrangements for his wages and discussed the potential for earning commissions before quitting his job.

Claimant failed to demonstrate good cause for voluntarily leaving work. He is disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 16-UI-51961 is affirmed.

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

DATE of Service: February 29, 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. 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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