

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0304

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100311). Claimant filed a timely request for hearing. On March 9, 2016, ALJ Frank conducted a hearing at which the employer did not appear, and on March 11, 2016 issued Hearing Decision 16-UI-54910, affirming the Department's decision. On March 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Tokyo Electron America, Inc. employed claimant as an engineer in charge from October 10, 2011 to January 14, 2016.

(2) Before 2015, claimant commuted two hours per day, three days per week, between his home in Kelso, Washington and his work site in Aloha, Oregon. In 2015, claimant was promoted to a lower-level supervisor position, requiring him to commute to work five days per week. By May 2015, claimant's daily commute had increased to four hours per day due to increased traffic congestion. Claimant left home at 5:00 a.m. and arrived back home at 6:00 p.m. Claimant was unable to purchase a home near his work that met his family needs.

(3) In December 2015, the employer decided to reduce its work force and offered a voluntary severance package (VSP) to some employees, including claimant, if they agreed to leave work voluntarily. The employees were given one week to apply for the severance program. The benefits of the VSP included paid time off from December 16, 2015 through January 14, 2016, and for claimant, severance pay equal to 7.5 weeks of full time employment. Claimant earned \$38 per hour from the employer. The employer did not tell claimant that it planned to lay him off or that it was likely he would be laid off in the future.

(4) Claimant elected to apply for the VSP to take advantage of the severance offer to avoid the possibility of being laid off without the VSP benefits, and to seek other work or a career change that would enable him to reduce his commute and work closer to his home. Claimant's VSP application was accepted, and on January 14, 2016, claimant voluntarily left work with the employer.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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.

To the extent claimant left work to avoid being laid off without a severance package, claimant quit work without good cause. Claimant testified that his employer's industry was experiencing a "slow down" and that claimant had, with a past employer, been laid off during a reduction in force after having failed to accept a severance package. Audio Record at 9:39 to 11:08. Claimant believed his position was less secure than others' because the funding source for his position was being phased out, and the employer had not told him how his position would be funded in the future. Audio Record at 17:22 to 18:34. However, despite claimant's concerns, the record fails to show that being discharged due to a future involuntary reduction in force was imminent or more than a mere possibility. Absent such evidence, claimant failed to show that no reasonable and prudent person in his circumstances, who had the option of continuing to work for the employer even if there was a possibility of discharge due to a reduction in force, would have chosen to leave work rather than continue to work for the employer for an additional period of time.

To the extent claimant left work to seek other work with a shorter commute, claimant quit work without good cause. Claimant asserted in his written argument to EAB that he left work, in part, to seek a job closer to home or a new career permitting him to work closer to home. OAR 471-030-0038(5)(b)(A) provides that "[l]eaving work without good cause includes . . . [l]eaving suitable work to seek other work." One factor to determine whether any work is suitable for an individual is the distance of the available work from the individual's residence. ORS 657.190. Although claimant's commute had increased due to changes in his schedule and traffic, the record does not show that claimant's commuting time was unreasonable or created a grave situation for claimant due to his health or other factors. Thus, absent evidence that claimant's work was not suitable, he did not have good cause to leave work to seek other work. Moreover, based on claimant's hourly wage, we infer that the cost of working, including commuting expenses, did not exceed the remuneration claimant received from work. For these reasons, claimant failed to establish that he quit work with good cause due to his commuting time and desire to seek work closer to home.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 16-UI-54910 is affirmed.

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

DATE of Service: April 19, 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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