

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0469

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115833). The administrative decision stated that a timely request for hearing needed to be filed on or before February 23, 2016. On February 24, 2016, claimant filed an untimely request for hearing. On March 1, 2016, ALJ Kangas reviewed claimant's hearing request and issued Decision 16-UI-54105, dismissing claimant's request as untimely, subject to reconsideration if he filed a completed Appellant Questionnaire within fourteen days of the date the hearing decision was mailed. On March 8, 2016, claimant filed an Appellant Questionnaire with the Office of Administrative Hearings (OAH). On March 21, 2016, OAH issued a letter order vacating Hearing Decision 16-UI-54105 and stating that a hearing would be scheduled to consider claimant's untimely request for hearing and, if appropriate, the underlying merits of decision # 115833. On April 5, 2016, ALJ Menegat conducted a hearing at which the employer did not appear, and on April 7, 2016 issued Hearing Decision 16-UI-56696, allowing claimant's untimely hearing request and affirming decision # 115833. On April 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

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

Since no adversely affected party sought review of that part of the hearing decision that allowed claimant's untimely request for hearing, EAB has confined its review to claimant's work separation.

FINDINGS OF FACT: (1) Moorehead Communications, Inc. employed claimant from June 15, 2012 until December 24, 2015, last as a manager of its store in Florence, Oregon. The employer was a retailer of cell phones and satellite television services.

(2) Throughout claimant's employment, the employer issued awards to him recognizing his achievements. These awards included salesperson of the month, store manager of the month and store manager of the year in Oregon. As a salesperson, claimant had outstanding sales and the store claimant later managed had outstanding sales.

(3) Sometime before December 2013, the employer was soliciting applications for an open sales marketing manager position and claimant applied. Claimant was not promoted into that position although he had been a store manager for almost a year and the person whom the employer promoted into that position had been a store manager for only three months. The person who was promoted was in his mid-twenties and claimant was forty-two years-old. The employer told claimant it had made the decision it did based on a comparison of the “year-over-year” sales numbers between him and the successful applicant. Audio at ~20:16. Claimant thought the employer’s explanation was a pretext since the successful applicant had not yet worked for the employer for a year. Since claimant was the oldest employee in Oregon and the successful applicant was significantly younger than him, claimant thought the employer had discriminated against him due to his age.

(4) Sometime in 2015, another marketing manager position opened in the employer’s organization and claimant again applied. Claimant was not promoted into that position, and again the successful applicant was significantly younger than claimant and had only been a store manager for approximately a year when claimant had been a store manager for close to four years. Because of the age discrepancy, claimant thought he had again been discriminated against because of his age. As well, claimant thought the employer had “pigeon-holed” him as the store manager in Florence because he had lived in that community for a long time and because he attracted business due to his personal acquaintance with many of the store’s customers. Audio at ~21:48, ~22:00. Claimant thought it was not fair that the employer was “trying to keep me there [at the Florence store]” and did not consider him for promotion given his sales record. Audio at ~22:12. Claimant complained to the employer’s human resources department about the age discrimination he perceived, but thought that department did take his complaint seriously.

(5) Sometime before December 2015, claimant became dissatisfied with his compensation and became aware that some of the salespeople he supervised were earning more than he was. Claimant asked the employer’s management if he could be demoted to a salesperson position. Those representatives told claimant the only available positions as a salesperson were at a store which was located one and one-half hours away from where claimant lived. Claimant did not pursue the demotion.

(6) By December 2015, claimant was unhappy continuing to work for the employer. He thought he deserved to be promoted, and the employer did not appreciate or value his efforts. When claimant told the employer’s management of his dissatisfactions and the unfairness he perceived, nothing was done. Claimant felt that he received “no support from upper management.” Audio at ~27:05. On approximately December 6, 2015, claimant notified the employer that he was quitting work.

(7) On December 20, 2015, claimant voluntarily left work.

CONCLUSIONS AND REASONS: 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.

While claimant contended the employer subjected him to age discrimination, his testimony about the reasons he did not receive the two promotions to marketing manager was inconsistent. At times he attributed the employer's rejections to age discrimination and at other times to being "pigeon-holed" as a store manager in Florence since that store was so successful. Audio at ~19:10, ~21:27, ~21:48, ~22:00. Assuming claimant thought his failure to receive those promotions was the result of age discrimination, he did not demonstrate that it existed. While two younger people may have been promoted instead of claimant, and the employer's workforce may have been significantly younger than claimant, two instances of younger people being promoted in preference to claimant do not, without more, establish that a discriminatory animus was in operation. Other factors might plausibly account for the decision not to promote claimant, including, for example, that the employer thought the people whom the sales marketing manager was going to supervise would be more productive if claimant did not manage them, that the employer's management thought applicants other than claimant were a better fit on the management team for reasons having nothing to do with claimant's age or the employer's management was aware that claimant was unhappy with the employer's organization. Claimant did not present any other examples supporting his claim of age discrimination other than that he did not achieve these two promotions. Although discrimination may be grave reason to leave work, claimant did not present direct evidence ruling out that his failure to secure the promotions he thought he deserved was attributable to discriminatory business reasons. Claimant did not meet his burden to show that the employer was discriminating against him based on his age.

Claimant's other contentions about the reasons he left work when he did were not of a level or degree to constitute grave reasons to leave work. Although claimant asserted that he believed the employer's management did not adequately support him, he did not demonstrate that this lack of support subjected him to any serious harm. While claimant might have thought he deserved more compensation for the work he was performing, and disliked that, during some periods, he made less money than the salespeople he supervised, his sense that this was unfair, without some showing that his level of compensation was objectively inadequate to meet his needs or caused some other type of harm to befall him, does not appear to constitute a grave reason to leave work. As well, claimant's contention that he was unhappy at work and felt under-appreciated does not, without more, establish that those feelings were of sufficient gravity to constitute good cause to leave work. Under the facts as they exist in this record, as described by claimant, a reasonable and prudent person would not have concluded that he needed to leave work to avoid grave circumstances.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-56696 is affirmed.

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

DATE of Service: June 2, 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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