

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0475

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121426). Claimant filed a timely request for hearing. On March 30, 2016, ALJ Holmes-Swanson conducted a hearing at which the employer failed to appear, and on April 4, 2016 issued Hearing Decision 16-UI-56435, affirming the Department's decision. On April 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Opus School of Music employed claimant from January 5, 2016 until January 27, 2016.

(2) Claimant was hired to teach piano at the employer's new school and to potentially work as a band leader at the school if its enrollment grew to support that position.

(3) In January 2016, due to low enrollment, claimant taught only two 30-minute lessons per week. He earned \$13 per lesson. Claimant spent one hour commuting each way to work to teach the lessons each Wednesday. Claimant used 1.5 gallons of gasoline to commute to work each Wednesday. Claimant's costs to teach the two lessons each week were less than the \$26 he received in remuneration for the work. Exhibit 1.

(4) Claimant had a master's degree in conflict resolution and had been training as a mediator through Clackamas County District Court one day per week, on Wednesday afternoons. Claimant was unable to continue volunteering on Wednesday afternoons due to the piano lessons he taught for the employer. The volunteer mediation opportunity was also available on Thursday.

(5) Claimant was not willing to continue working for the employer teaching two lessons per week. On January 27, 2016, claimant discussed his dissatisfaction with the lack of hours with the employer's owner. The employer and claimant mutually agreed to sever the employment relationship. Audio Record at 15:37 to 15:58; Exhibit 1.

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

Claimant testified that he did not quit and was not discharged, but that he and the employer's owner agreed it did not "make sense" for claimant to continue working one hour per week. Audio Record at 16:00 to 16:17. For purposes of unemployment insurance benefits determinations, the administrative rule, and not the parties' characterization of the work separation, establishes the nature of the work separation. OAR 471-030-0038(2) (August 3, 2011) states, in pertinent part, that if the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving; if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge.

Claimant's work separation occurred because of a mutual agreement between claimant and the employer to end the employment relationship. There is no evidence in the record to show that claimant could have continued to work for the employer for an additional period of time had claimant not initiated the January 27, 2016 conversation with the owner and agreed to end his employment. Because claimant was the moving party in initiating the separation, and it likely would not have occurred when it did but for his agreement, the work separation was a voluntary leaving.

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 generally 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 because he was dissatisfied with the number of hours he worked and the income he received compared to the time he spent commuting to and from work to teach two lessons per week. Claimant was also dissatisfied that the Wednesday classes conflicted with an opportunity to gain mediation experience. Claimant's situation was analogous to an hourly employee who quits due to a reduction in hours. OAR 471-030-0038(5)(e) provides that if an individual quits work due to a reduction in hours, he has quit work without good cause unless continuing to work substantially interferes with his return to full time work, or the cost of working for the employer exceeds the amount of remuneration received.

Claimant's costs to work were less than his remuneration for work. Claimant earned \$26 per week and used about 1.5 gallons of gasoline commuting for work. We presume that 1.5 gallons of gas, even if he used that amount each way, cost less than \$26. Nor does the record show that claimant had other costs to work, or that his commuting time was unreasonable or created a grave situation for claimant due to

his health or other factors. Claimant also asserted at hearing that, including his home-to-work and work-to-home travel, he earned less than Oregon minimum wage for each hour he worked. Audio Record at 14:22 to 14:42. However, the record does not show that the employer created a policy or contract promising to pay for such travel, and absent such policy or contract, under federal and Oregon law, the employer generally need not compensate an employee for travel before and after work. 29 CFR §§785.35; OAR 839-020-0045(1) (January 9, 2002).

To the extent claimant left work because of the conflict with volunteer mediation work on Wednesdays, claimant failed to show he had good cause to leave work. The Wednesday classes did not foreclose the opportunity for mediation experience because the same volunteer program was available on Thursdays. Moreover, the record does not show continuing to work would have substantially interfered with claimant's search for other work.

Claimant quit work without good cause and is disqualified from the receipt of unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-56435 is affirmed.

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

DATE of Service: May 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. 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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