

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0648

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153303). Claimant filed a timely request for hearing. On May 11, 2016, ALJ Murphey conducted a hearing and issued Hearing Decision 16-UI-59355, affirming the Department's decision. On May 31, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he presented new information and certain documents he did not offer into evidence during the hearing. Claimant did not explain why he was unable to present this information or those documents during the hearing or otherwise show as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond his reasonable control prevented him from doing so. For this reason, EAB did not consider the new information and documents that claimant sought to present by way of his written argument. EAB considered only information and documents received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) OpenSesame employed claimant as a salesperson from June 23, 2014 until January 8, 2016. Claimant sold e-learning courses to prospective customers based on lists maintained by the employer, leads he generated himself, customers' calls to the employer inquiring about the e-learning courses or cold calls made by claimant.

(2) Throughout claimant's employment, the employer measured his performance by the extent to which he met monthly sales quotas as determined by the revenues his sales generated. Claimant did not know what the employer had established as his minimum monthly sales or revenue quota. Claimant was never formally warned or disciplined for inadequate performance or failing to meet the quotas.

(3) Beginning in June or July 2015, the employer's sales manager began to meet with claimant once a week to review his performance in making customer contacts and generating potential sales. During these meetings, claimant and his manager discussed claimant's activities during the past week, the mix of contacts he had made through phone calls, emails and in-person meetings, the likelihood those contacts would generate sales, and whether, going forward, it would be beneficial for claimant to emphasize certain forms of contact over others. The sales manager also coached claimant and made recommendations about how he might improve his sales, and advised claimant on strategies he might effectively pursue with particular potential customers. In these weekly meetings, the sales manager also evaluated for claimant whether his activities during the past week appeared sufficient or insufficient to allow him to meet the employer's revenue goals and if he needed to make improvements in certain areas.

(4) In December 2015, claimant's activities and his customer contacts decreased during the holiday season, and were lower than in previous months. During a week in approximately late December 2015, claimant and the sales manager met for their regular weekly sales meeting. The sales manager evaluated claimant's performance and stated that claimant's sales activities needed to increase fifteen-fold over what they had most recently been in order for claimant to achieve his monthly performance objectives. Claimant told the sales manager that there was "no way" he could do that. Audio at ~43:28. In response, the manager told claimant that he needed to increase his efforts or resign. Claimant told the sales manager he was going to resign. Claimant then stated to the manager that he was "relieved" at resigning because it had been his intention for a long time to leave work for the employer because the position was not a good match for him. Audio at ~34:11, ~40:55. The employer and claimant later decided that claimant's last day was going to be January 8, 2016.

(5) On January 8, 2016, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's work separation. The employer contended claimant voluntarily left work, and claimant contended the employer "effectively" discharged him when the sales manager supposedly told him if he was unwilling to increase his work efforts, he needed to resign. Audio at ~18:12, ~33:43, ~34:05, ~36:10, ~40:55, ~43:43. OAR 471-030-0038(2) (August 3, 2011) sets out the standard for determining if a work separation was a discharge or a voluntary leaving. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

To determine the proper characterization of claimant's work separation, we have accepted the facts surrounding it as recited in claimant's hearing testimony. While the sales manager may have told claimant he needed to increase his sales activities by a factor of fifteen in order to achieve sales objectives, both claimant and the sales manager agreed that the manager was referring to an increase over claimant's unusually diminished activities in the slow holiday weeks in December 2015. Audio at ~14:13, ~16:43, ~31:40, ~32:36. Although claimant generally asserted he could not reasonably multiply his work efforts by fifteen, he was unable to state what specifically the sales manager meant as a practical matter by this statement or what claimant understood it to mean in terms of specific increases

to his work task. Audio at ~9:22, ~14:13. Claimant's lack of inquiry and information on this point suggests he was not interested in determining the feasibility achieving the employer's recommendations, or in making any efforts to continue working for the employer.

Based on claimant's account, the sales manager gave claimant a choice to try to increase activities or to resign; claimant chose to resign without trying to increase his work activities or even to gather the information needed to determine whether such an increase was practicable. A mutual agreement between an employer and an employee to end the work relationship is treated as a voluntary leaving and not a discharge. *See Employment Department v. Shurin*, 154 Or App 352, 959 P2d 637 (1998); *J. R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (mutual agreement to end work relationship can be inferred when claimant did not voice disagreement to the employer's resignation request and did not insist on continuing to work). By claimant's actions in not objecting to the employer's request that he resign and agreeing to quit, claimant's work separation is properly considered a voluntary leaving based on his own account of the relevant facts.

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 apparently quit because he did not want to try to increase his work activities as the sales manager requested. Although, as mentioned above, claimant contended he could not intensify his work efforts to the extent the sales manager wanted, he did not present sufficient evidence to show its impossibility, or that serious harms would have resulted to him from if he had attempted to do so. There is no evidence in the record showing or tending to show that grave reasons motivated claimant to leave work.

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

DECISION: Hearing Decision 16-UI-59355 is affirmed.

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

DATE of Service: July 8, 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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