

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0699

Reversed
Disqualification

PROCEDURAL HISTORY: On April 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84132). Claimant filed a timely request for hearing. On May 20, 2016, ALJ Wyatt conducted a hearing, and on May 27, 2016 issued Hearing Decision 16-UI-60667, concluding the employer discharged claimant, not for misconduct. On June 14, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Department gave claimant a job referral to J & K Warehousing. Claimant visited the work site and agreed to work for J & K Warehousing on a trial basis for \$10 per hour until she decided if she would continue working for the employer. J & K Warehousing employed claimant from February 1 to February 8, 2016 as an office worker.

(2) Claimant worked for the employer from 10:00 a.m. to 3:00 p.m. each day from February 1 through February 5, 2016, and earned \$10 per hour.

(3) On Friday, February 5, 2016, claimant's supervisor called claimant, told her the office worker position would pay \$12 if claimant continued to work for the employer, and asked claimant if she had decided to continue working for the employer. Claimant asked if she could "think about things." Audio Record at 12:22 to 12:32. Claimant, in fact, was not willing to continue working for the employer because she was uncertain she could perform the work duties to the satisfaction of the supervisor.

(4) Claimant called the supervisor early in the morning on Monday, February 8, 2016 and told the supervisor she could not commit to the position, but thanked her for the opportunity to try the job.

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

In Hearing Decision 16-UI-60667, the ALJ found that claimant was not willing to continue working for the employer, but found that the period of February 1 through 5, 2016 was a “separate employment” that the employer ended on February 8, 2016. Hearing Decision 16-UI-60667 at 3. We disagree.

It is first necessary to decide the nature of the work separation. Claimant averred that she was never hired by the employer, worked only on a trial basis, and never completed new employee paperwork. Audio Record at 6:53 to 7:01. These facts are not dispositive of the issue of whether claimant “worked” for the employer. Under OAR 471-030-0038(1)(a) (August 3, 2011), “work” is defined as “the continuing relationship between an employer and an employee.” Employment Department Law defines an “employee” as a person who performs services for remuneration who has not been determined by the Department to be an independent contractor, and an “employer” as an organization or person for whom services are performed. ORS 657.015, 657.040, 657.020, 657.025. “Employment” is defined generally as service for an employer performed for remuneration. ORS 657.030. Here, claimant performed 25 hours of services for the employer in exchange for remuneration. Under the referenced laws and rules, claimant “worked” for the employer for those hours.

OAR 471-030-0038(2)(a) (August 3, 2011) provides 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. OAR 471-030-0038(2)(b). Claimant could have continued to work for the employer for an additional period of time, but chose to sever the employment relationship instead because she was uncertain she could perform the work duties to the satisfaction of the supervisor. The supervisor, however, was satisfied with claimant’s work performance and willing to allow claimant to continue working for \$12 per hour. The work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

Claimant left work because she did not believe she could perform her job duties as well as the supervisor expected. However, the supervisor was satisfied with claimant’s work performance and told her she could continue working for the employer. Although claimant may have been insecure about her ability to complete the job duties, the record does not show that her concerns constituted a reason of such gravity that a reasonable and prudent office worker of normal sensitivity, exercising ordinary common sense in her circumstances would conclude she had no reasonable alternative but to discontinue working for the employer.

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

DECISION: Hearing Decision 16-UI-60667 is set aside, as outlined above.

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

DATE of Service: July 25, 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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