

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0771

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #85912). Claimant filed a timely request for hearing. On June 2, 2016, ALJ Frank conducted a hearing, and on June 10, 2016, issued Hearing Decision 16-UI-61546, affirming the Department's decision. On June 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) New to You, a consignment sales company, employed claimant, last as a store manager, from November 4, 2013 to April 1, 2016.

(2) While working as manager, claimant became unhappy with some of his working conditions. He was unhappy about being prohibited from speaking Spanish to customers or employees and being advised to discourage customers from asking for him personally. Claimant's dissatisfaction with the employer in those regards caused him to begin seeking other work while he continued to work for the employer.

(3) In March 2016, the employer spoke to claimant about voluntarily stepping down as manager and working strictly as an employee due to management deficiencies claimant recognized himself and the future assumption of the management duties by an owner, effectively eliminating the manager position. Exhibit 1, item 2. Audio Record ~ 13:30 to 14:15. On March 6, 2016, claimant notified the employer of his desire to continue his employment strictly as an employee.

(4) On April 1, 2016, claimant met with an owner who notified him that he would begin his job as a sales employee, effective immediately. She also notified him that his wage would be reduced from \$16 per hour to \$13 per hour and that his hours would be reduced from full-time to part-time, also effective immediately, although the number of hours he worked would vary from schedule to schedule, potentially to one day per week or on-call.

(5) That day, claimant resigned because he believed the employer was forcing him to do so by reducing his hours. Exhibit 1, item 5.

CONCLUSIONS AND REASON: We agree with the Department and the ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). Otherwise, “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 the employer for an additional period of time.

Claimant asserted that he quit work when he did because he believed the employer was pressuring him to resign by reducing his hours from full-time to part-time or possibly on-call. Exhibit 1. Although claimant asserted that he had observed the employer use a similar tactic to pressure a prior manager to resign, the part-time employment offered to claimant gave him the opportunity to continue his employment at a wage he did not believe was unreasonable. Moreover, his belief that the employer was pressuring him to resign by reducing his hours to part-time was based on speculation as he quit immediately without determining what his part-time hours would be, even on the next schedule. Under the circumstances, claimant failed to show that his concerns constituted reasons of such gravity that a reasonable and prudent sales employee of normal sensitivity whose management position had just been eliminated, exercising ordinary common sense and interested in maintaining employment, would conclude he had no reasonable alternative but to immediately reject a part-time sales position and

To the extent, claimant quit work due to his reduction in hours from full-time to part-time, he also failed to establish good cause. Claimant did not assert or show that continuing to work for the employer would have substantially interfered with his return to full time work or that the cost of working for the employer would have exceeded the amount of remuneration he received. Thus, to the extent claimant quit work due to a reduction in hours, he quit work without good cause under OAR 471-030-0038(5)(e).

Claimant asserted in written argument that he “was not given the chance to fully present his [his] case and [his] evidence” to the ALJ. Written Argument at 1. However, the ALJ admitted claimant’s offered exhibits into evidence, gave claimant the opportunity to read his written statement into evidence and although the ALJ may have denied claimant the opportunity to present witness testimony about “the discriminatory and hostile ways” in which the employer allegedly treated other employees, that evidence on its face was largely irrelevant and immaterial to claimant’s personal circumstances given his testimony that the precipitating factor for his resignation on April 1 was the reduction in hours rather than the employer’s allegedly discriminatory and hostile ways. Audio Record ~ 9:45 to 13:30. On this record, the ALJ gave claimant a reasonable opportunity for a fair hearing, as required by ORS 657.270.

Claimant had the burden to show that he quit work when he did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet his burden 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-61546 is affirmed.

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

DATE of Service: August 9, 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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