

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0860

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 83712). Claimant filed a timely request for hearing. On June 10, 2016, ALJ Shoemake conducted a hearing in which the employer did not participate, and on July 1, 2016, issued Hearing Decision 16-UI-63001, affirming the administrative decision. On July 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Intel Corporation employed claimant as a patent attorney from June 16, 1996 until April 11, 2016.

(2) On or about March 15, 2016, claimant received a performance review that gave him a rating of “improvement required.” The evaluation placed claimant on an improvement plan which directed him to complete a certain amount of work by the end of March 2016. The plan warned claimant that if he was unsuccessful in fulfilling the expectations of this improvement plan, his employment would be terminated. The evaluation gave claimant a link to a website that offered claimant a severance package if he chose to voluntarily leave work rather than attempting to complete the improvement plan. Audio recording at 19:18.

(3) Claimant attempted to the best of his ability to complete the work he was expected to perform by the end of March 2016, but was unable to do so. Claimant was also aware that in 2015, due to a decline in the employer’s business, the employer had discharged a number of employees who had been given a rating of “improvement required,” as well as a number of employees whose performance was rated as satisfactory. Because he believed that his discharge was imminent, claimant agreed to voluntarily leave work and accept the employer’s severance plan. In return for his agreement to quit his job and waive his rights to sue the employer, the severance plan provided claimant with 27 weeks of pay and employer-paid health insurance benefits for six months.

(4) In accordance with the terms of the severance plan to which he agreed, claimant's last day of work for the employer was April 11, 2016.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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.

Claimant voluntarily left work for the employer because he believed the employer was going to discharge him; he chose to accept the employer's severance package rather than wait for a discharge he believed to be inevitable. Leaving work without good cause includes resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. OAR 471-030-0038(5)(b)(F). OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

Based on this record, claimant's conclusion that his discharge was imminent and probably inevitable was reasonable. After the employer placed him on a performance improvement plan and warned him that successful completion of the plan was essential to his continued employment, claimant was unable to complete the plan. Claimant also knew that in 2015, the employer had discharged numerous employees who received a performance rating of "improvement required." The evidence in the record shows that claimant's discharge would not have been due to claimant's willful or wantonly negligent violation of the employer's expectations – claimant testified that he attempted to the best of his ability to perform the tasks he was directed to accomplish in the performance improvement plan, but was unable to do so. Based on these circumstances, a reasonable and prudent person exercising ordinary common sense would have accepted the employer's severance plan and voluntarily quit his job rather than await a probable discharge that would provide him with no employer-paid benefits or salary after the work separation.

Claimant voluntarily left work with good cause. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-63001 is set aside, as outlined above.¹

¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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

DATE of Service: August 16, 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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