

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1104

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111655). Claimant filed a timely request for hearing. On September 16, 2016, ALJ R. Frank conducted a hearing, and on September 19, 2016 issued Hearing Decision 16-UI-67702, affirming the Department's decision. On September 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sears Outlet Stores, LLC employed claimant as a salesperson from November 24, 2015 to May 22, 2016.

(2) During claimant's pre-hire interview the employer's store manager explained that the work would pay a guaranteed minimum wage plus commission on sales of products and protection agreements. Claimant told the manager he wanted part time work, two or three days per week. The employer hired claimant to work two five-hour shifts each week.

(3) Claimant resided less than 12 miles from the employer's business. He commuted to work on a scooter when possible, but sometimes took public transportation. It took claimant approximately two hours each way to commute to work using public transportation. Claimant told the store manager on one occasion that he did not believe it was worth his time to spend four hours commuting to work for a five hour shift.

(4) Claimant was dissatisfied with his employment. He felt he was not scheduled to work enough hours to make sufficient commissions so that he could earn more than minimum wage. The employer scheduled its salespeople to work up to 15 hours per week based on performance and availability, but did not schedule claimant to work more shifts. Although claimant offered to work on-call hours to fill in when other employees were absent, he sometimes called off or did not report to work for his own scheduled shifts.

(5) By May 2016, claimant was generally scheduled to work between four and nine hours per week. He never sold enough products or protection plans to earn more than the guaranteed minimum wage. In approximately May 2016, one of claimant's coworkers told claimant that only one salesperson, a lead worker, was scheduled to work full time shifts. Claimant concluded that his hours and earning potential with the employer was not going to improve, and decided to quit work.

(6) On May 22, 2016, claimant told the assistant manager that he was quitting work, effective immediately. At that time, claimant was not scheduled for another shift until May 30, 2016. He told the assistant manager when he quit that he was never going to earn commissions, but did not tell her or the store manager prior to quitting that he wanted more hours or better shifts.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit work without 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 quit work because he was dissatisfied with his hours and earnings. Claimant worked few hours, sometimes as little as four hours in a week, and, although he had the potential to earn more than minimum wage, never worked enough hours or earned enough commissions to exceed minimum wage. Although claimant was understandably concerned about those conditions, the record fails to show that his concerns amounted to a grave situation. Rather, the record shows that the circumstances that caused claimant to quit work were at least in part circumstances of his own creation. Claimant told the store manager prior to being hired that he only wanted part time work and only wanted to work two or three days in a week. In addition, although he testified that he made himself available to fill in for absentee employees, claimant sometimes did not report to work for his own scheduled shifts, at least once because he felt his five-hour shift was not worth the length of his commute. To any extent claimant was willing to work more hours or wanted better or different shifts, the record also shows that the employer had advantageous weekend shifts and up to fifteen hours of work potentially available to claimant based on his availability and work performance. The record is devoid of evidence, however, that prior to quitting work, claimant ever made the employer aware that he wanted more hours or different shifts or asked the employer if, or how, he could get either of them. The employer was thus deprived of the opportunity to improve claimant's hours or earning potential or otherwise help claimant increase his commission-based earnings. No reasonable and prudent person with concerns about his hours and earnings would quit work without allowing the employer the opportunity to address his concerns. We therefore conclude that claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-67702 is affirmed.

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

DATE of Service: October 14, 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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