

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1169

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 111728). Claimant filed a timely request for hearing. On September 28, 2016, ALJ Vincent conducted a hearing in which the employer did not participate, and on September 30, 2016, issued Hearing Decision 16-UI-68380, affirming the administrative decision. On October 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant referred to an email he received from one of the employer's executives which "used very aggressive language encouraging me to accept a package. I now have witnesses to back up this claim." Claimant's reference to the email and additional witnesses is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, which allows EAB to consider information not received into evidence at the hearing if the party presenting the information demonstrates that the new information is relevant and material to EAB's determination and demonstrates that factors or circumstances beyond the party's control prevented the party from offering the information into evidence at the hearing. In support of his request, claimant stated that the email he now wants EAB to consider "was not printable nor was I able to forward it. After the hearing, I learned why I was not able to print or forward the email." Claimant provided no explanation why he was unable to print or forward the email so that it could be offered into evidence at the hearing. Nor did claimant explain why he did not have the individuals who had knowledge of the email's contents testify at the September 28 hearing.¹ Without this information, we have no basis for concluding that any circumstances beyond claimant's reasonable control prevented him from presenting evidence regarding the email he received from a manager. Claimant's request to present new information is therefore

¹ We note that the hearing notice claimant received for the September 28 hearing informed him that if he had witnesses he wanted to testify at the hearing, he should tell the ALJ about the witnesses at the start of the hearing, provide the ALJ with the witnesses' names and phone numbers, and inform the witnesses that they would be called when their testimony is needed. Record document, Notice of Hearing at 6.

denied, and we considered claimant's written argument only to the extent it was based on evidence in the record.

FINDINGS OF FACT: (1) From October 1, 2000 to June 24, 2016, Intel Corporation employed claimant as a market development manager.

(2) In April 2016, claimant learned that the employer planned to layoff approximately 13,000 employees. Claimant and other employees were offered the option of selecting a severance package and resigning. Claimant was required to decide by June 1, 2016 if he was going to accept one of the severance packages he had been offered. Audio Recording at 10:27.

(3) Claimant initially believed that his layoff was a "possibility." Audio Recording at 8:17. Sometime after claimant was offered the severance packages, one of the employer's managers conducted a conference call with claimant and others who had been offered the packages. During this conference call, the manager encouraged employees to accept the ERP because it was an extremely lucrative package that might not be offered again, and there was no assurance that claimant and others would be employed "six months down the road." Audio Recording at 9:55.

(4) After the conference call, claimant met with his manager, who told claimant he should seriously consider taking a severance package because claimant's role was changing and the manager did not know what would happen "six months down the road." Audio Recording at 10:20.

(5) Sometime during the last week of May 2016, a coworker told him that the coworker's wife, who worked in the employer's human resources department, said that the employer had reduced its work force by only one-half of the necessary amount. Audio Recording at 10:55.

(6) Claimant decided to accept an enhanced retirement severance package to avoid the possibility he would be laid off at a future date without a generous severance package. On June 24, 2016, he voluntarily left work for the employer.

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

To the extent claimant left work to avoid being laid off without a severance package, claimant quit work without good cause. Claimant's decision to leave work and accept the severance package was based on statements of two managers, who asserted that claimant should accept a severance package because they

did not know what was going to happen “six months down the road.” Findings of Fact 3 and 4. In addition, claimant testified that his fear of layoff was also based on a coworker’s rumor about the number of layoffs the employer had made. Audio Recording at 11:04. The evidence in the record thus fails to show that claimant’s future discharge due to a reduction in force was imminent, likely certain, or more than a possibility.² Nor did claimant make any showing that the possibility of being laid off at some future date presented him with a grave situation due to any particular circumstances. Because the record lacked such evidence, claimant failed to meet his burden to demonstrate that no reasonable and prudent person would have refused a severance package under the circumstances claimant faced rather than choosing to continue working for the employer, notwithstanding the possibility of a future layoff.

Claimant voluntarily left work without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-68380 is affirmed.

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

DATE of Service: October 31, 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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² *Compare with* 2016-EAB-0860 (August 16, 2016) (claimant, who accepted a severance package and quit his job, had good cause for voluntarily leaving work because his discharge, not for misconduct, “was imminent and probably inevitable”).