

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1223

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140014). Claimant filed a timely request for hearing. On October 12, 2016, ALJ Triana conducted a hearing, and on October 13, 2016 issued Hearing Decision 16-UI-68180, affirming the Department's decision. On November 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Step Forward Activities employed claimant from January 6, 2010 until August 5, 2016, last as a manager of a residential home it operated in John Day, Oregon. The employer's main office was in Baker City, Oregon. As manager, claimant earned a salary of \$2,739 per month.

(2) Sometime before August 5, 2016, the employer's residential program coordinator became dissatisfied with how claimant managed the residential home and what she perceived as claimant's poor recordkeeping. The residential program director spoke with the employer's executive director about removing claimant from her managerial position. The residential program director told the executive director that claimant had previously done a good job as a community support specialist and that she wanted to offer claimant a full-time position in that capacity. The executive director agreed.

(3) On August 5, 2016, the executive director with the residential program coordinator placed a conference call to claimant. The executive director told claimant that the employer was "going to be replacing management" and she would no longer be the manager of the residential home in John Day. Audio at ~7:40. The executive director then told claimant, "we would like to keep you as a full-time employee," but he was then interrupted by the residential program coordinator who stated the employer did not have any full-time positions available in John Day at that time. The executive director had not known that a community support specialist position in John Day was not open. After some discussion, the executive director told claimant she could have an on-call respite caregiver position, working up to 28 hours per week. Because that position was to fill in for caregivers who were unable to work their regular shifts, there were no guaranteed hours for it. Claimant thought that the respite position would

pay \$11.42 per hour, although the employer would have paid claimant \$13.17 per hour because of her caregiving experience. Claimant did not ask either the executive director or the residential program coordinator about the wage the employer would pay her in the respite position. At the time claimant turned down the respite caregiver position, she knew that the employer generally filled full-time positions that became available, like the community support specialist position, from the pool of on-call respite caregivers.

(4) On August 5, 2016, after being offered the respite position, claimant refused the offer and voluntarily left work. Claimant did not accept the position because she felt hurt and humiliated about being removed from the managerial position. Claimant resented the employer for the action it had taken and did not want to stay on as a respite caregiver “to do another favor” for the employer or to “help [the employer] out.” Audio at ~13:36, ~13:53. Claimant just “wanted to go.” Audio at ~13:38. Later that day, claimant sent a text message to the residential program coordinator to let her know where she had left her work keys and requesting her final paycheck be mailed to her. The residential program coordinator later called and left a voicemail message for claimant stating that the keys she had located did not appear to be claimant’s work keys. Sometime after, claimant left a voicemail message for the residential program coordinator stating, “I don’t work for you anymore, so do not contact me again.” Audio at ~28:12.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Claimant contended that the employer discharged her, but the employer’s witness contended that claimant voluntarily left work. Audio at ~6:00, ~8:16, ~27:00. The standard for determining the nature of a works separation is set out in OAR 471-030-0038(2) (August 3, 2011). 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. OAR 471-030-0038(2)(a). 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). "Work" means the continuing relationship between an employer and an employee, and is not defined by the particular job an employee has. OAR 471-030-0038(1)(a).

While claimant asserted over and over that she was “fired” when the executive director told her the employer did not want her to remain as manager for the residential home in John Day, she readily agreed that executive director told her he wanted her to continue as a full-time employee and, when he learned that no such positions were available, told her she could continue working for the employer as a respite caregiver. Audio at ~8:16, ~8:50, ~9:59, ~16:46. That the employer was willing to allow claimant to continue working, albeit in a different position, and clearly informed claimant of this, shows that the employer did not sever the work relationship by demoting claimant. When claimant turned down the respite caregiver position, however, she was expressing her unwillingness to continue the employment relationship. Claimant’s work separation was therefore 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). It is not good cause to leave work due to a reduction in pay when earnings are reduced as a result of a transfer, demotion or reassignment, and it is not good cause to leave work due to a reduction in hours unless, among other things, the cost of continuing to work exceeds the amount of remuneration received. OAR 471-030-0038(5)(d)(A); OAR 471-030-0038(5)(e). The standard for showing good cause 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.

From claimant's testimony at hearing, she turned down the respite caregiver position because she felt humiliated and hurt about being demoted from a managerial position and resented that demotion. Audio at ~9:59, ~11:40, ~12:00, ~13:53. Although claimant's emotional reaction to losing her position as a manager was understandable, it was not grave. Claimant did not suggest that she was concerned that she would be oppressed or abused if she took the respite caregiver position, or that she would be subjected to any cognizable harms, or that the work was unsuitable for her. A reasonable and prudent person in claimant's circumstances, exercising ordinary common sense, would not have concluded that her displeasure and unhappiness at being demoted left her no reasonable alternative other than to leave work.

At hearing, claimant alluded to the fact that the respite caregiver position was a lesser paid position than that of manager and she would work fewer hours per week. However, since the reduction in pay was the result of a demotion, it does not on its face establish that the reduction constituted good cause to leave work. OAR 471-030-0038(5)(d)(A). As well, claimant did not suggest that it was likely her cost of continuing to work would exceed her remuneration. OAR 471-030-0038(5)(e). It does not appear from the tenor of claimant's testimony that financial considerations motivated her decision to leave work, or that, for her, they constituted a situation of gravity.

Claimant did not show that grave reasons necessitated her decision to leave work when she did, or that she had good cause for leaving. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-69180 is affirmed.

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

DATE of Service: November 22, 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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