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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0081

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 125646). The employer filed a timely request for hearing. On January 9, 2017, ALJ Murdock conducted a hearing, and on January 17, 2017 issued Hearing Decision 17-UI-74793, concluding claimant voluntarily left work without good cause. On January 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB containing information that was not part of the hearing record. The employer failed to show that factors or circumstances beyond the employer's reasonable control prevented it from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. We considered the entire hearing record when reaching this decision.

FINDINGS OF FACT: (1) Jet Heating, Inc. employed claimant as a salesperson from April 4, 2016 until April 21, 2016.

(2) Sometime before April 18, 2016, claimant told the general manager he needed a sales proposal form to use for the sales process. Claimant provided the employer with a form to use as a model for the new form. The general manager agreed to prepare a proposal form similar to the one claimant provided. Other salespeople had completed sales in the past without the use of a proposal form like the one claimant proposed. Claimant completed three sales without the proposal form.

(3) On April 18, 2016, the general manager asked the employer's information technology (IT) employee to assist claimant with completing the form claimant proposed. Claimant was dissatisfied with the delays that occurred while creating the form. Claimant believed he could complete sales more efficiently using the form and the employer paid claimant on a commission-only basis. Later on April 18, 2016, the general manager sent claimant an email stating that the employer was working to complete the new form claimant had requested.

(4) On April 20, 2016, claimant sent the general manager an email stating, "I do not plan on staying at Jet. I will stay as long as you need me to while finding a replacement. Or, I can have your vehicle and phone turned in tomorrow morning. Let me know." Audio Record at 10:50 to 10:59. The general manager replied to claimant's email by sending claimant an email directing him to turn in his gear on April 21, 2016.

(5) On April 22, 2016, claimant returned his work-related gear to the employer.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without good cause.

The Nature of the Work Separation. The parties did not dispute the content of the email exchange between claimant and the general manager on April 20, 2016. Audio Record at 14:54 to 15:03, 16:06 to 16:16. They disagreed, however, about the nature of the work separation. The employer construed claimant's email as notice of claimant's resignation with the date to be determined by the employer, while claimant asserted he did not quit. OAR 471-030-0038(2) (August 3, 2011) provides the standard for determining the nature of a work separation. 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).

Claimant argued at hearing that he did not did quit because he did not state, "I quit," and because the general manager discharged him by directing claimant to turn in his gear. Audio Record at 20:09 to 20:18, 21:29 to 21:32, 13:39 to 13:50. While claimant did not state, "I quit," the plain language of his email was that claimant would not continue to work for the employer, effective either the following day or when the employer found claimant's replacement. The employer responded to claimant's email by stating claimant must turn in his gear the next day, but only after claimant acted first to sever the employment relationship by sending the email stating he planned to leave work. There is no evidence in the record showing that the employer would not have had continuing work available for claimant had claimant not sent the April 20 email.

Claimant also implied at hearing that he did not "quit" his job with the employer because he provided notice before leaving work. Audio Record at 15:56 to 16:02. Claimant asserted that he would not have "just quit and walk away from" the commission he allegedly had already earned on sales. Audio Record at 16:24 to 16:43. Although claimant offered to work until the employer found his replacement, there is nothing in claimant's email to suggest that claimant's departure was, for claimant, optional or uncertain. Moreover, the Court of Appeals has held that when a claimant initiated a work separation and did not supply a date certain in his resignation but offered to stay as long as needed or until a replacement was hired, and the employer effectuated the separation immediately, the separation remained a voluntary leaving because by his offer, the claimant delegated to the employer the discretion to choose the actual date of the separation. *See Westrope v. Employment Department,* 144 Or App 163, 925 P2d 587 (1996). Because the language of the April 20, 2016 email cannot reasonably be construed as anything other than a declaration to the employer that claimant was quitting, claimant's work separation was a voluntary

leaving. Claimant gave the employer the ability to select the ending date of his notice period, and the employer chose April 21, 2016. Claimant voluntarily left work on April 21, 2016.

Good Cause for Leaving Work. 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). 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 asserted that he was discharged and did not quit, and did not provide a reason for quitting when he did. The only reason discernible in the record for claimant's decision to leave work was that the employer did not provide claimant with the proposal form he requested within the time period he expected. Claimant was anxious to have the new form because he believed the new form would enable him to complete sales more efficiently and earn more commissions. The record shows the employer responded to claimant's requests and began the process of creating the new form, and assigned its IT person to assist with any problems in creating the form. Because claimant made three sales without the form before he quit, we presume it was not necessary to have the form to complete a sale and earn income. Thus, assuming claimant asked for the form on his first day of employment, the record does not show that waiting 17 days for the form created working conditions for claimant that were so grave that no reasonable and prudent person would have continued to work for his employer for an additional period of time. Claimant failed to establish good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 17-UI-74793 is affirmed.

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

DATE of Service: February 8, 2017

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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