

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0194

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with the employer with good cause (decision # 80849). The employer filed a timely request for hearing. On January 11, 2017, ALJ Frank conducted a hearing, and on January 27, 2017 issued Hearing Decision 17-UI-75602, concluding that claimant voluntarily left work with the employer without good cause. On February 16, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Americas Best Inn & Suites employed claimant as a desk clerk at the employer's hotel from April 29 to November 20, 2016.

(2) The employer paid claimant \$12 per hour. Prior to November 20, 2016, the employer typically scheduled claimant to work 4 days, 29 hours per week. Claimant lived approximately 14 miles from the employer's hotel and it took her approximately 20 minutes to drive to or from work.

(3) On November 20, 2016, the employer's owner/manager informed claimant that going forward, she typically would be scheduled to work 2 days, 14 hours per week. Claimant told the owner that that was not enough hours. Approximately 2 hours later, claimant left work early without explanation.

(4) The owner scheduled claimant to work on November 21, 2016, but claimant did not report for work or call in to see if she was scheduled to work. Claimant did not go to the employer's hotel after November 20, 2016 to discuss her employment status with the owner.

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

The first issue in this case is the nature of claimant's work separation from the employer. 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) (August 3, 2011). 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.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At hearing, claimant and the employer’s owner/manager disagreed on the events leading to claimant’s work separation. However, we found claimant’s testimony less consistent than the owner’s testimony. For example, claimant initially testified that when the owner informed her on November 20, 2016 that her hours were being reduced, she told the owner she could not afford to live working only two days per week. Transcript at 5. Claimant also initially testified that the owner then “told me I only work Sundays. I told her I needed more hours than that. She told me she’d call me when she needed me again.” Transcript at 5. However, she later testified that she agreed to work only two days per week and asked the owner, ““So you’re going to call me when you need me again?” And her response was, ‘Yeah, Yeah.’ ‘Yeah, yeah,’ and she went into her apartment.” Transcript at 7-9. Finally, claimant testified that it was not until she telephoned the owner on December 5, 2016 that the owner told claimant she would call her on days the employer needed claimant to work. Transcript at 8-9.

In contrast, the owner consistently testified that claimant left work early on November 20, 2016 without explanation after stating that 14 hours per week was not enough work, and that she never told claimant she would call her when needed. Transcript at 12-14. We therefore found the owner’s testimony more credible than claimant’s testimony, and found facts in accordance with the owner’s testimony on matters in dispute. It also is undisputed that the owner scheduled claimant to work on November 21, 2016, that claimant did not report for work or call in to see if she was scheduled to work, and that claimant did not go to the employer’s hotel after November 20, 2016 to discuss her employment status with the owner. Although claimant testified that she telephoned the employer before December 5, 2016, we find it likely that claimant severed the employment relationship on November 20, 2016, and later attempted to rescind her resignation, or to establish a new relationship with the employer. We therefore conclude that claimant voluntarily left work on November 20, 2016.

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). Where, as here, an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work, or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e) (August 3, 2011). Claimant did not assert or show that continuing work for the employer substantially interfered with her search for full time work. Nor did she assert or show that the cost of working for the employer, including the cost of her commute, exceeded the remuneration she received. Claimant therefore failed to establish that she quit work with good cause, and is disqualified from receiving benefits.

DECISION: Hearing Decision 17-UI-75602 is affirmed.

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

DATE of Service: March 9, 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.