

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0224

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90359). Claimant filed a timely request for hearing. On February 17, 2017, ALJ Snyder conducted a hearing and issued Hearing Decision 17-UI-77253, affirming the Department's decision. On February 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Outback Manufacturing, Inc. employed claimant from March 15, 2015 to April 1, 2016.

(2) The employer hired claimant to work as a programmer and inspector. The employer paid claimant \$29.00 per hour for that work.

(3) In March 2016, the employer began to reorganize the company and eliminated claimant's position. On March 31, 2016, the employer offered to demote claimant to document control specialist at a reduced rate of \$22.00 per hour.

(4) Claimant did not want to accept the demotion because he felt it was beneath his skill and responsibility levels and it involved a significant reduction in pay. He was concerned that the employer was not transferring him to an appropriate position, and about the effect a significant demotion would have on his relationships with coworkers. Claimant asked to discuss the demotion with the owner, but the owner refused; claimant asked to discuss it with the human resources manager, who discussed the demotion with him and gave him time to think about whether or not he would accept the position.

(5) On April 1, 2016, claimant refused the demotion and quit his job.

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

Claimant argued that he was forced to leave his employment, in essence, that by demoting him to an inappropriate position the employer constructively discharged him. The distinction between a voluntary leaving and discharge is that 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; 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)(August 3, 2011). “Work” means the continuing relationship between and employer and employee, without respect to what position the employee holds. OAR 471-030-0038(1)(a).

There is no dispute that as of April 1, 2016, the employer had continuing work available for claimant, albeit in a position claimant considered ill-matched to his capabilities. Because claimant could have continued to work for the employer for an additional period of time, regardless which position he would have held, the work separation was a voluntary leaving.

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 quit work because he considered the position into which the employer wanted him to demote was inappropriate for his skill and responsibility levels, the demotion involved a significant pay reduction, he was concerned about the effect the demotion would have on his relationship with coworkers, and he was displeased that the employer’s owner refused to discuss the matter with him. None of those considerations, singly or in the aggregate, presented claimant with a grave situation that necessitated he quit when he did. Claimant did not assert or show that he lacked the skills or experience to perform work that required a reduced skill or responsibility level, that the demotion would have created such a problem between himself and his coworkers that the work environment was likely to become hostile or intolerable, or, given that the human resources manager discussed matters with him, that the owner’s refusal to also discuss the demotion with claimant made the conditions associated with ongoing work so grave he had no reasonable alternative but to leave.

With respect to the reduction in pay, we agree that a \$7.00 per hour reduction in pay was significant; assuming claimant worked full time, the reduction would amount to up to a \$14,560 reduction in wages annually.¹ Any reasonable and prudent person would find it difficult to adjust to such a large reduction in wages. However, generally speaking, to show good cause for quitting work, an individual must show that he derived some type of benefit by quitting work.² At the time claimant chose to leave work, his hourly rate of pay was \$22.00 per hour. Claimant’s evidence failed to suggest that claimant improved

¹ \$7.00 per hour x 40 hours per week x 52 weeks per year = \$14,560.

² See e.g. *Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or.App. 68, 340 P.3d 136 (2014).

his circumstances or derived a benefit by quitting work, even work that was beneath his skill levels that paid \$22.00 per hour because of the reduction in his hourly wage.³

Under the circumstances described, we cannot say that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have accepted the employer's offer of a disadvantageous demotion at a reduced wage rather than concluding, as did claimant, that he had to quit. We therefore conclude that claimant quit work without good cause, and he is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-77253 is affirmed.

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

DATE of Service: March 16, 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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³ OAR 471-030-0038(5)(d) only applies to individuals who leave work due to a reduction in pay when the reduction is *not* the result of a transfer or demotion. Therefore, although the pay reduction was a factor in claimant's decision to quit work, "good cause" for quitting work for that reason is determined by application of OAR 471-030-0038(4).