

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0279

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 104452). The employer filed a timely request for hearing. On February 28, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-77841, concluding claimant voluntarily left work without good cause. On March 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Newport Auto Center Inc. employed claimant as a service manager from March 18, 2015 to December 27, 2016.

(2) On December 27, 2016, during claimant's work shift, he requested a private meeting with the employer's general manager. During the meeting, claimant told the manager that the job "wasn't working for him anymore" as he was dissatisfied with his compensation and his dad was close to dying in Arizona where he wanted to go to spend more time with him before he died. He also said that he had plans to "run a Honda performance shop" building performance engines. Audio Record ~ 5:00 to 7:00. Claimant turned in his keys to the general manager. On his way out of the building, he stopped by the office of the human resources manager, whom he considered a friend, and told her "he had to go, felt he needed to spend some time with his dad and that when he got back, if there was a position open, great." Audio Record ~ 23:45 to 24:00.

(3) Later that day, claimant posted on Facebook, "I just quit my shitty job at [the employer] and it feels great. Time to do my own thing again." Audio Record ~ 20:45 to 21:05.

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

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). Claimant asserted at hearing that rather than quit, he was discharged by the general manager during their meeting on December 27 after the general manager told him he “would like to go in a different direction.” Audio Record ~ 15:00 to 16:00. However, claimant did not dispute that he wrote a Facebook post later that day concerning the end of his employment, although he could not remember the content. “I remember posting something but I don’t remember exact words...probably said something in anger.” Audio Record ~ 21:00 to 24:00. More likely than not, claimant quit and wrote the Facebook post announcing to followers that he had “just quit” his job and it was “time to do [his] own thing again,” consistent with the general manager’s testimony concerning their meeting.

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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Although claimant asserted he was discharged and did not proffer reasons for quitting, we infer that he quit for the reasons he gave to the general and human resources managers – that he wanted to spend time with his dying father and was dissatisfied with his income.

For purposes of applying OAR 471-030-0038(4), OAR 471-030-0038(5)(g) provides that “[l]eaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons.” “Compelling family reasons” includes, in pertinent part, when “the illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off.” OAR 471-030-0038(1)(e)(B). “[A] member of the individual’s immediate family” includes spouses, domestic partners, parents and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

On this record, the provisions of OAR 471-030-0038(5)(g) are inapplicable because they apply only to a need to care for immediate family members. Because claimant quit work, not to care for his father, but to spend time with him, claimant did not leave work due to “compelling family reasons” under that administrative rule, and his resignation must be adjudicated under the standard good cause provision set forth in OAR 471-030-0038(4). Under that provision, claimant also did not show good cause for leaving work when he did. Although his desire to spend time with a dying parent was understandable, he failed to show that rather than quit, no reasonable and prudent person in his circumstances would have requested leave for that purpose, particularly when that person previously had been granted leave for a similar purpose concerning his other parent. Audio Record ~ 12:45 to 13:30.

Claimant also left work, in part, because he was dissatisfied with his compensation. However, absent a showing that the cost of working for the employer exceeded the remuneration claimant received, or that continuing to work for the employer substantially interfered with a search for other work, claimant failed to establish that no reasonable and prudent employee in his circumstances, rather than quit and earn no income, would have continued to work for his employer and receive compensation for an additional period of time.

Finally, to the extent claimant quit work to “run a Honda performance shop” or “to do my own thing again,” we infer he quit his suitable work for the employer to seek other work or for self-employment, neither of which constitutes good cause. *See* OAR 471-0038(5)(b)(A), OAR 471-0038(5)(b)(G).

Claimant had the burden to show that he quit work when he did with good cause as defined under OAR 471-030-0038(4). Claimant failed to meet his burden and is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-77841 is affirmed.

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

DATE of Service: March 27, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.