

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0310**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with the employer without good cause (decision # 142231). Claimant filed a timely request for hearing. On March 2, 2017, ALJ Meerdink conducted a hearing, and on March 3, 2017 issued Hearing Decision 17-UI-78143, affirming the Department's decision. On March 9, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The Port of Portland employed claimant from September 24, 1988 to December 1, 2016, last as a senior planner.

(2) On September 1, 2016, the employer notified claimant that it was terminating his employment, effective December 1, 2016 unless claimant found another position with the employer. Claimant searched for other positions with the employer but did not find any that he considered suitable. Prior to December 1, 2016, the employer offered to allow claimant to continue working in his current position until January 1, 2017. Claimant declined the offer and quit work on December 1, 2016 to search for work with other employers.

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

OAR 471-030-0038(2)(b) (August 3, 2011) states that 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. 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). "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.* Here, it is undisputed that claimant could have continued to work for the

employer, at least until January 1, 2017, but severed the employment relationship on December 1, 2016. Claimant therefore voluntarily left work on December 1.

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.

In applying OAR 471-030-0038(4), leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). In determining whether any work is suitable for an individual, the Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, and the distance of the available work from the residence of the individual. ORS 657.190.

In the present case, claimant left work to search for other work because he did not find other positions with the employer that he considered suitable. However, claimant did not assert, and the record does not show, that the work he could have performed for the employer in his current position from December 1, 2016 to January 1, 2017 was unsuitable. We therefore conclude that claimant quit suitable work to search for other work. Claimant quit work without good cause under OAR 471-030-0038(5)(b)(A), and therefore is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 17-UI-78143 is affirmed.

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

**DATE of Service:** March 31, 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](http://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.