

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0356

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 12, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 74200). The employer filed a timely request for hearing. On March 2, 2017, ALJ Monroe conducted a hearing, and on March 6, 2017, issued Hearing Decision 17-UI-78311, concluding that claimant voluntarily left work without good cause. On March 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant 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.

FINDINGS OF FACT: (1) Lane Community College (College) employed claimant from November 17, 2008 until September 30, 2016, last as a marketing specialist and adjunct instructor in the College's Arts department.

(2) In late January or early February 2016, the college notified employees of a separation incentive plan that offered employees who agreed to resign their positions a choice of a \$9,000 lump sum payment or payment of employee-only health insurance benefits for one year. An employee who wished to accept the separation incentive plan was required to submit a resignation and an election form on or before April 30, 2017.

(3) Some time prior to April 19, 2017, the union representative for the bargaining unit of which claimant was a member sent employees an email, warning that employees who were hired by the employer after a certain date were likely to be subject to layoff in the upcoming fiscal year due to low seniority. Claimant was among the group of employees who were vulnerable to lay off because their hire dates.

(4) After claimant received the email from his union representative, he then spoke with his supervisor, the interim dean of the Arts department. Claimant's supervisor told him that claimant's position would not be funded for the upcoming fiscal year, which began on July 1, 2016.

(5) On April 19, 2016, submitted a letter of resignation in which he stated that his last day of work for the college would be September 30, 2016, and also submitted a form in which he elected to accept the separation incentive plan. Claimant quit his job because he believed that the College was planning to lay him off and concluded that it was therefore in his best interest to resign and accept the severance benefits.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with good cause.

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) (August 3, 2011). 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 his job because he believed that the College was going to lay him off and that it was therefore in his best interest to quit and take advantage of the College's separation incentive plan. In Hearing Decision 17-UI-78311, the ALJ found that because the College had made no decisions about future funding claimant's position at the time claimant chose to quit his job, claimant did not face "a situation of such gravity that he had no reasonable alternative but to leave work on September 30, 2016." Hearing Decision 17-UI-78311 at 3. We disagree.

The focus of our analysis must be what claimant knew at the time he decided to resign, as well as the source of the information upon which he based his decision. Claimant made his decision to quit his job only after his union representative and his supervisor had advised him that his layoff for budgetary reasons was probable and imminent. Claimant acted reasonably in relying on the information provided by his supervisor, a person who presumably had up to date information about funding in the upcoming year for the department of which he was head, and the union representative, who presumably was knowledgeable about the College's budgetary situation, as well as the seniority rights and layoff procedure in the applicable collective bargaining agreement. A reasonable and prudent person, who understood that the employer was probably going to lay him off, would choose to resign and accept severance benefits rather than waiting until the employer laid him off with no benefits. Claimant therefore voluntarily left work with good cause, and is entitled to the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-78311 is set aside, as outlined above.

Susan Rossiter and D. P. Hettle;

J. S. Cromwell, not participating.

DATE of Service: April 7, 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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