

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0472

Affirmed
Late Request for Hearing Allowed
Disqualification

PROCEDURAL HISTORY: On February 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 153608). On February 21, 2017, decision # 153608 became final without claimant having filed a request for hearing. On February 22, 2017, claimant filed a late request for hearing. On February 28, 2017, ALJ Kangas issued Hearing Decision 17-UI-77835, dismissing claimant's request for hearing subject to his right to renew the request by filing a response to an appellant questionnaire by March 14, 2017. On March 9, 2017, claimant filed a timely response to the appellant questionnaire. On March 14, 2017, the Office of Administrative Hearings (OAH) canceled Hearing Decision 17-UI-77835, and on March 22, 2017 scheduled a hearing for April 4, 2017. On April 4, 2017, ALJ Meerdink conducted a hearing during which he allowed claimant's late request for hearing, and on April 5, 2017, issued Hearing Decision 17-UI-80271, affirming decision # 153608. On April 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Intel Corporation employed claimant as an analytical chemist from June 2000 until June 24, 2016.

(2) In approximately April, the employer offered claimant and other employees a voluntary severance package, hoping to encourage approximately 2,400 employees to accept the package and quit their jobs. Employees offered the package needed to notify the employer by June 1, 2016 if they wanted to accept the package. Claimant understood that if not enough employees agreed to voluntarily separate from their jobs, the employer would lay off a large number of employees.

(3) Claimant was a member of a group that the employer intended to "thin out" by voluntarily or involuntarily separating employees from their jobs. Audio recording at 17:23. Claimant also knew that in the prior year, some employees who had chosen not to accept a voluntary severance package offered by the employer were eventually involuntarily separated from their jobs.

(4) Claimant understood, based on information he received from a professional organization to which he belonged, that it took a chemist approximately six months to a year to find a new job. After reviewing the voluntary severance package, he concluded the benefits provided by the package would support him for six months to a year of unemployment while he looked for a new job, and that the involuntary severance package would not provide that same level of support. Audio recording at 23:51. Claimant also consulted an attorney, who advised him that he would probably have no legal basis for contesting an involuntary separation from his job.

(5) On June 1, 2016, claimant notified the employer that he wanted to accept the voluntary severance package; under the terms of the package, his last day of work for the employer was June 24, 2016. Claimant voluntarily left work because he believed there was a “reasonable chance” he would be laid off if he did not agree to voluntarily separate from his job. Audio recording at 27:05.

(6) Claimant received decision # 153608 on or about February 10, 2017. After thinking about the decision over the weekend of February 11 through 12, he decided to request a hearing.

(7) On February 14, 2017, claimant placed his hearing request in a stamped envelope in his mailbox; he addressed the envelope as follows: Office of Administrative Hearings, Attn: Request for Hearing, PO Box 14020, Salem, OR 97309-4020. Because claimant’s mailbox was the “old-fashioned type” that had a flag that could be raised to indicate the mailbox contained mail to be picked up, claimant raised the flag. Audio recording at 8:51. When claimant picked up his mail on February 15, the envelope containing his hearing request was gone. Audio recording at 9:25.

(8) On February 24, 2017, the Office of Administrative Hearings (OAH) received claimant’s hearing request. The envelope containing the hearing request was postmarked February 22, 2017.

CONCLUSION AND REASONS: We agree with the ALJ. Claimant has shown good cause to extend the filing deadline in this matter a reasonable time, and his late request for hearing is allowed. Claimant voluntarily left work without good cause.

Late Request for Hearing: ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. OAR 471-040-005(4)(b) (July 14, 2011) provides that the filing date for a mailed hearing request is “the postmarked date affixed by the United States Postal Service...” Because claimant’s hearing request on decision # 153608 was postmarked February 22, 2017 – more than 20 days after the decision was mailed – it was late. ORS 657.875, however, provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist.

Here, claimant placed the envelope containing his hearing request in his mailbox on February 14 and raised the flag to indicate that the letter carrier needed to pick up his mail. When he checked his mailbox on February 15 and found the envelope gone, he reasonably believed the letter carrier had taken the envelope. Despite claimant’s efforts to make sure his hearing request would be timely, the envelope was not postmarked until February 22. The apparent failure of the United States Postal Service to promptly process claimant’s mail was a circumstance beyond claimant’s reasonable control. Claimant

has therefore shown good cause to extend the deadline for filing his hearing request a reasonable time, and his late hearing request is allowed.

Voluntary Quit. 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). “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 her employer for an additional period of time.

To the extent claimant left work to avoid being involuntarily laid off at some future date, he failed to demonstrate that he quit work with good cause. Claimant’s decision to leave work and accept the voluntary severance package was based on his belief that he had a “reasonable chance” of being laid off, that he felt that the “threat [of being laid off] was definitely there,” and that he knew employees who had refused the voluntary severance package and were subsequently laid off. Audio recording at 27:05, 24:40. Claimant was never told, however, that the employer would discharge him. Audio recording at 19:290. The record therefore fails to show that being discharged due to a future involuntary reduction in force was imminent or more than a mere possibility. Absent such a showing, claimant failed to establish that no reasonable and prudent person in his circumstances, who had the option of continuing to work for the employer even if there was a possibility of discharge due to a future reduction in force, would have chosen to continue working rather than voluntarily leave work.

Claimant voluntarily left work without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-80271 is affirmed.

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

DATE of Service: May 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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