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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0501

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75306). Claimant filed a timely request for hearing. On April 17, 2017, ALJ Sgroi conducted a hearing at which the employer did not appear, and on April 19, 2017 issued Hearing Decision 17-UI-81302, affirming the Department's decision. On April 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information not offered into evidence during the hearing. Claimant did not explain why he did not present this new information at the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the information that claimant sought to present by way of his written argument.

FINDINGS OF FACT: (1) Navex Global employed claimant as an account executive in sales from approximately May 23, 2011 until February 28, 2017. Claimant's employer is identified in the Department's records as Global Compliance, Inc.

(2) As of 2017, claimant was earning $70,000 per year. The employer also provided health, dental and vision insurance benefits to claimant each month as well as making a contribution on claimant's behalf to a 401(k) retirement plan.

(3) During one month in 2016, claimant generated approximately $76,000 in sales. During one month in 2016, claimant built a pipeline of customer sales that was approximately $175,000. A pipeline of sales was the dollar amount that customers whom claimant had contacted and identified had "clear path" of purchasing from the employer in a particular month, but had not yet committed to doing so. Audio at ~13:32.

(4) On Friday, February 24, 2017, claimant had meeting with one of the employer's vice-presidents to discuss his work performance. The vice president told claimant during the meeting that he had two

options. The first option was to agree to a performance improvement plan (PIP) in which claimant would be required to generate $80,000 in sales and to build a sales pipeline of $175,000 during the month of March 2017. If claimant did not achieve the goals of the PIP by March 30, 2017 he would be discharged. The second option available to claimant was to agree to leave work within one or two days in exchange for a severance package of one month's salary and one month of continued employer-provided and paid for fringe benefits. The vice-president told claimant that if he decided to accept the PIP, and had not met one-half of the PIP's goals by March 15, 2016, the vice-president might discharge him at that time thereafter and he would not then be allowed to accept the severance package or receive any of the benefits it provided. The vice-president told claimant he was required to notify him by February 27, 2017 as to which option he was going to accept.

(5) During the weekend following February 24, 2017, claimant decided to quit and accept the severance package. He did so because he thought that he could not achieve the goals in the PIP and, when he did not, he would be discharged and would not receive pay or the benefits he was allowed under the severance package.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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.

If claimant did not meet the goals set forth in the PIP, claimant testified that the employer likely would have discharged him at the end of March 2017, or possibly in the middle of March 2017 if he had not by that time met the half-way mark in achieving the goals. However, it is not certain that PIP goals were not "achievable" and not "attainable," as claimant asserted at the hearing. Audio at~15:53, ~16:20, ~19:00, ~22:45. While the PIP required claimant to build a sales pipeline of $175,000 in March 2017, claimant testified he had accomplished that level of performance in one month in 2016. Audio at ~17:53. While the PIP also required claimant to generate $80,000 in sales in March 2017, claimant stated that he had achieved approximately that level, $76,000, in one month in 2016. Audio at ~ 18:06. Aside from claimant's broad assertions that he believed he absolutely could not meet the PIP's goals, he did not explain why he was able to approximately achieve them in 2016 but was reasonably prevented from doing so in March 2017, *e.g.*, that the sales conditions were markedly different in March 2017 than in 2016, or that his accomplishments during a few months in 2016 were for some reason unique and aberrational in terms of the level of sales generated, or some other circumstance(s) showing that what he achieved during two months in 2016 was not reasonably generalizable to March 2017. In addition, although claimant testified that he would need to meet the PIP goals to avoid discharge if he accepted the option of continuing to work, he also stated that the vice-president had revised the pipeline goal downward, from the $225,000 to $175,000, because he considered the initially established goal to have been "unattainable." Audio at ~16:20. Assuming claimant was correct that it was impossible for him to

meet the revised goals in the PIP, claimant did not present evidence sufficient to rule out that the vice-president would have revised those goals a second time if they were indeed beyond a level that could have reasonably been achieved. For each of these reasons, claimant did not show that the goals set out in the February 24, 2917 PIP were ironclad and immutable and that it was not realistic to expect him or anyone to be able to achieve them. Accordingly, claimant did not establish that the PIP created a grave situation that he could only avoid by accepting the severance package and quitting.

As well, assuming *arguendo* that claimant could not reasonably have met the March 2017 goals set out in the PIP and the vice-president would not have modified them to take account of this impossibility, claimant did not show that his discharge would likely have occurred before the end of the month, March 31, 2017. While claimant testified that the vice-president had told him that if he had not met the PIP goals half-way by the middle of March 2017 "he [the vice-president] could terminate me at any time after that," this is far short of a guarantee that claimant was going to be discharged before March 31, 2017. Audio at ~18:45. On the evidence in this record, the earliest date on which claimant showed he likely would have been discharged for failing to meet the PIP's goals was March 31, 2017.

If claimant was discharged because he accepted the PIP and then did not meet its goals by March 31, 2017, we assume, and claimant did not present any evidence to the contrary, that the employer would have paid him his salary and provided the benefits to which he was entitled for working the month of March 2017. As such, by accepting the severance package and quitting on February 28, 2017, claimant did not receive anything more than what he would have received if he had accepted the PIP continued to work until March 31, 2017. The only apparent advantage to claimant in quitting and accepting the severance package was that he would not be working during the month of March 2017. While under certain circumstances it may be good cause to quit work to avoid a discharge that is not for misconduct,[1] if there is no other benefit to quitting than avoiding further work, the only circumstance that could create gravity is the relative imminence of the discharge. Here, assuming that claimant did not meet the terms of the PIP, he would likely not have been discharged before March 31, 2017, which was more than a month after he quit on February 28, 2017, although even if he had been discharged sooner than that, such as on March 15, 2017, as of the effective date that claimant left work, his discharge was not imminent. As such, claimant did not show that reasonably grave situation caused him to leave work when he did.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 17-UI-81302 is affirmed.

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

DATE of Service: <u>May 31, 2017</u>

[1] OAR 471-030-0038(5)(b)(F) provides that it is not good cause to leave work to avoid a discharge or potential discharge for misconduct, Here, there was no evidence in the record that the discharge that would follow claimant's failure to satisfy the terms of the PIP would have been for misconduct.

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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