

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0523

Affirmed
Disqualification
Eligible Week 06-17

PROCEDURAL HISTORY: On March 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, within 15 days of claimant's planned quit without good cause (decision # 115627). Claimant filed a timely request for hearing. On April 18, 2017, ALJ M. Davis conducted a hearing, and on April 18, 2017, issued Hearing Decision 17-UI-81269, affirming the administrative decision. On May 2, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Forest River Manufacturing employed claimant as a lead and quality control inspector from January 3, 2006 until February 10, 2017.

(2) In early January 2017, claimant's supervisor told her that he was unable to grant her request for a raise because production was low. At the time claimant requested the raise, she was earning \$14.50 per hour and had only received one raise – of 50 cents per hour – during the past five years. Claimant would have been willing to accept any increase in her wages the employer was willing to give her. Audio recording at 8:01.

(3) On February 7, 2017, claimant notified her supervisor that she was quitting her job, effective February 17, 2017. Claimant quit work because her request for a raise had been denied.

(4) On February 10, 2017, the employer discharged claimant because he had enough employees working and did not need claimant's services.

CONCLUSION AND REASONS: Claimant voluntarily left work without good cause. Claimant is, however, eligible to receive benefits for the period of February 7 through 13, 2017 (week 06-17).

Claimant informed the employer on February 7, 2017 that she was leaving work and that her last day would be February 17, 2017. The employer did not permit claimant to work through her notice period, however, and discharged her on February 10, 2017. When an employer discharges a claimant prior to the date on which the claimant planned to voluntarily leave work, ORS 657.176(8) provides that if the voluntary leaving would have been for reasons that do not constitute good cause, and the discharge was not for misconduct and occurred no more than 15 days prior to the date of the planned voluntary leaving, then the separation shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred, but the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. Since the employer discharged claimant less than 15 days before she planned to quit, ORS 657.176(8) is potentially applicable to her claim. We next consider whether claimant's planned voluntary leaving would have been for good cause to determine the applicability of ORS 657.178(8).

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 his employer for an additional period of time.

Claimant quit her job because the employer did not grant her request for a raise. Claimant failed to demonstrate that the employer's failure to increase her \$14.50 per hour wage created a grave situation. Claimant's willingness to accept any increase in her wages that the employer was willing to give her indicates that the concept of a raise was motivated more by principles of fairness or entitlement, and not by economic necessity. Because a reasonable and prudent person would not have concluded that her supervisor's refusal to grant her request for a raise left her no reasonable alternative but to quit her job, claimant failed to show good cause for voluntarily leaving work.

Since claimant's voluntary leaving would not have been for good cause, we next consider whether the employer discharged her for misconduct. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. On this record, we conclude that the employer discharged claimant essentially for lack of work: production was low, and because the employer had sufficient workers, claimant's services were not needed. Because claimant's discharge did not result from any conduct on her part that constituted a willful or wantonly negligent violation of an employer expectation, it was not a discharge for misconduct.

Because claimant voluntarily left work without good cause, she is disqualified from the receipt of unemployment benefits. Because the employer discharged claimant, not for misconduct, within 15 days of the date of her planned quit, she is eligible under the ORS 657.176(8) to receive benefits for the week in which the discharge occurred – the week of February 5 through 11, 2017 (week 06-17).

DECISION: Hearing Decision 17-UI-81269 is affirmed.

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

DATE of Service: May 22, 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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