

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0530

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 160822). Claimant filed a timely request for hearing. On April 26, 2017, ALJ Meerdink conducted a hearing, and on May 1, 2017 issued Hearing Decision 17-UI-82209, affirming the Department's decision. On May 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2). Even if we had considered claimant's argument the outcome of this decision would remain the same for the reasons explained.

FINDINGS OF FACT: (1) Royal Moore Buick GMC employed claimant as a sales associate from August 5, 2011 to February 20, 2017.

(2) Claimant was chronically late to work because of the distance between his residence and the employer's business. In part because of claimant's tardiness, the employer did not provide claimant with as many sales leads as claimant thought he should have. Claimant was dissatisfied with the number of leads he received, the number of cars he sold and the amount of pay he received.

(3) On February 20, 2017, claimant was going to arrive late to work because of his commute. While stuck in traffic claimant decided to quit work; he did not report to work thereafter except to pick up his paycheck a few days later.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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.

Claimant alleged a number of reasons for quitting work, including that he thought the employer was not withholding taxes appropriately from his paychecks and that the employer withheld sales leads from him in order to discriminate against him on the basis of his age and race. The preponderance of the evidence in the record shows, however, that the proximate cause of his decision to quit work was dissatisfaction with his pay. He did not establish that the employer violated wage and hour laws or did not pay him in accordance with Oregon’s payroll laws and rules. He did not establish on the record that the employer paid him less than minimum wage. It appears that the root of many of claimant’s problems with his pay and working conditions, such as not receiving as many sales leads as he wanted, was the result of his chronic tardiness, a circumstance within his control regardless how long his commute to work might have been. Claimant did not establish by a preponderance of the evidence that his pay concerns amounted to a grave situation, nor did he establish that he improved his circumstances, particularly with respect to his dissatisfaction with his lack of income, by quitting his job and reducing his income to nothing. Under the circumstances as described at the hearing, claimant did not show that no reasonable and prudent person would have continued to work for the employer for an additional period of time. In the absence of such evidence, claimant has not shown good cause for quitting work. He therefore is disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 17-UI-82209 is affirmed.

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, 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.

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.