

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0723

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 90454). Claimant filed a timely request for hearing. On June 6, 2017, ALJ R. Frank conducted a hearing, and on June 9, 2017 issued Hearing Decision 17-UI-85322, affirming the Department's decision. On June 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Petco Animal Supplies Stores, Inc. employed claimant from December 2015 to April 11, 2017. Claimant earned \$9.75 per hour.¹

(2) Beginning January 2017, claimant took a five-week medical leave of absence. She returned to work on February 27, 2017. Claimant worked full time during the week of February 27th.

(3) The employer began recruiting new employees before claimant's medical leave. During claimant's leave of absence, the employer hired additional employees. Upon returning claimant to the work schedule after her medical leave, the employer scheduled her to work all available hours and began to cross-train her by assigning her to different positions in the store.

(4) After the week of February 27th, the employer reduced claimant's hours 20 to 30 hours each week. The employer scheduled her to work shifts that often lasted fewer than five hours each. Although claimant preferred to work as a cashier, the employer often scheduled others to work as cashier and assigned her to work as a stocker or to clean animal cages.

¹ We take notice of the generally cognizable fact that Oregon's minimum wage in April 2017 was \$9.75 per hour. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(5) Claimant began to feel that she was being targeted with job assignments she did not prefer. She also did not like commuting to work for short shifts, although her commute was approximately six miles.

(6) For the week of April 10, 2017, the employer scheduled claimant to work only 13.5 hours. On April 10, 2017, claimant spoke with her manager about some of her concerns about her hours and her preference to work exclusively as a cashier. Claimant had also tried to contact human resources for assistance with her concerns but they did not respond to her call.

(7) On April 11th, the manager assigned claimant to work as a cashier. When a newly hired employee arrived to work, the manager then reassigned claimant to stock and face shelves and assigned the newly hired employee to work as a cashier. Claimant's feelings felt hurt and she began to cry. She told the manager that she felt she was being replaced and did not like that. The manager told claimant that he was not trying to replace her, he was trying to develop her as an employee by having her learn jobs in the store other than cashiering.

(8) Claimant felt afraid for her job. She liked cashiering, felt like she did a good job as a cashier, and felt like she was losing her job as a cashier. She also felt that stocking and facing shelves and cleaning animal cages were remedial work that would not help her job growth.

(9) After leaving on April 11, 2017, claimant did not return to work for the employer. Claimant quit work because her hours were reduced and because she was reassigned from the cashiering duties she preferred to other duties such as cleaning animal cages and stocking and facing shelves. The employer had scheduled claimant to work on April 12, 2017 and April 13, 2017, but claimant did not report to work, respond to the employer's attempts to contact her, or ask the employer about resuming work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit work without good cause.

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). If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or the cost of working exceeds the remuneration received. OAR 471-030-0038(5)(e). 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's hours were reduced, she did not show good cause for leaving work. Claimant did not establish that working, for example, four and one-half hour shifts several days a week substantially interfered with her return to full time work. Nor did claimant establish that the cost of commuting approximately six miles to work and performing work for the employer exceeded the remuneration she received from working at least four and one-half hours at \$9.75.

To the extent claimant quit work because she was not given the cashiering assignments she preferred, claimant also did not show good cause for leaving work. Although claimant preferred cashiering over stocking and cage cleaning duties she thought more suitable for newly hired employees, she did not show that the stocking and cleaning duties she was given were unsuitable for her, endangered her health or well-being, or otherwise presented a grave situation for her. Nor does the record suggest that the employer was being abusive or unreasonable when it withheld cashiering assignments from her; rather, the employer's scheduling and work assignment considerations appear to have been reasonably motivated by a legitimate business need to have a sufficient number of cross-trained employees available to work when needed. Claimant's preference to work as a cashier, and her hurt feelings when she was not given her preferred assignments or was reassigned from cashiering so a newer employee could cashier, did not amount to a grave situation.

Claimant did not show good cause for leaving work. She is therefore disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-85322 is affirmed.

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

DATE of Service: July 11, 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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