

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0734

Reversed
Disqualification

PROCEDURAL HISTORY: On May 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 154453). Claimant filed a timely request for hearing. On May 18, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 31, 2017. On May 31, 2017, ALJ Wyatt conducted the hearing, at which the employer failed to appear, and on June 7, 2017 issued Hearing Decision 17-UI-85141, concluding claimant quit work with good cause. On June 16, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer asked for a new hearing on the grounds that it did not receive notice of the May 31st hearing in this matter until June 7th. The employer's request for relief is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Because we have found in the employer's favor on other grounds, however, we need not, and do not, determine whether the employer's non-receipt of the hearing notice constituted a circumstance beyond the employer's reasonable control that would allow EAB to order a new hearing.

FINDINGS OF FACT: (1) Furniture Connexion employed claimant from 2014 to July 1, 2016.

(2) Claimant originally worked for the employer as store manager at its Olympia, Washington location, then in 2015 transferred to work as store manager at its Beaverton, Oregon location. In February 2016, the employer closed its Beaverton location. Claimant told the employer he was going to quit his job at that time, but the employer offered to create an assistant manager position for claimant at its Gresham, Oregon location and temporarily transfer claimant into that job until the employer opened a new store in Beaverton later the same year.

(3) Claimant was living in the Beaverton area at the time and would have to commute approximately 45 minutes to work at the Gresham location. The transfer also involved an approximately 45% reduction in pay. Claimant nevertheless accepted the transfer and continued working for the employer. He accepted

the transfer instead of quitting because of the prospect that he would resume working as a store manager once the employer opened its new Beaverton location and be returned to his previous rate of pay.

(4) In early June 2016, claimant learned that the employer had changed its plans and was not going to open a new store in Beaverton, and that he would therefore not be returned to a store manager position before the end of the year. Claimant told the employer that he would be willing to continue working as an assistant manager if the employer could increase his pay rate so it was closer to what he had earned as a store manager, and increase his managerial duties. The employer chose not to do so and, although it still intended to open a new store at some point in the future, did not have any definite plans to open a new store, and claimant did not want to continue working on the same terms he had been for an indefinite period.

(5) Claimant notified the employer that he was going to quit his job at the end of June, and, effective July 1, 2016, quit work. Claimant ultimately quit work when he did because he believed his pay was too low and his job with the employer was at a “dead end.” Audio recording at ~ 17:55, 20:00.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude 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.

The ALJ concluded that claimant had good cause for leaving work “because the work was not suitable for his background and constituted a hardship based on claimant’s large reduction in salary, his commute to work, and the lack of future in the job.” Hearing Decision 17-UI-85141 at 2-3. We disagree for the reasons that follow.

There is no dispute that claimant had customarily worked for the employer as a manager, but although he was comparatively underemployed and underpaid as an assistant manager the job was not so different from what he had previously done that it became unsuitable for him.¹ He had a background managing the employer’s furniture stores, and was working in a similar position as an assistant manager of the employer’s furniture store, which suggests the work was not outside his skillset or experience. Nor does the record suggest that the work was unsuitable because it posed a threat to his health, morals or safety.

¹ ORS 657.195 provides: “In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.”

There is, likewise, no dispute that claimant took a 45% pay cut once he lost his position as a store manager. OAR 471-030-0038(5)(d) provides that an individual who leaves work due to certain kinds of reductions in pay may establish good cause for quitting, but that rule specifically states that the good cause provisions do not apply to situations where the pay reduction occurred because of a “transfer, demotion or reassignment.” Therefore, although claimant’s pay reduction was significant, it was not the sort of pay cut that suggests good cause for quitting work. Also, notably, claimant chose to accept the job the employer offered to him in February 2016 with full knowledge that his pay would be almost halved, suggesting that while it is indisputable that claimant was disadvantaged by the pay cut, it was not a condition that made the work objectively unsuitable for him, nor was it a condition that he subjectively considered so grave that he had no reasonable alternative but to quit work.

Finally, claimant also left work because he considered his position with the employer a “dead end” job. There is no dispute on this record that the employer had closed the store claimant managed and that the employer’s plans to open a new store for him to manage had not been successful. Likewise, the possibility that the employer might successfully open a store at some unknown point in the future or that another store manager job might become available were merely hypothetical at the time he quit work, making claimant’s conclusion that his job was at a “dead end” reasonable under the circumstances. However, it does not appear on this record that being in a “dead end” job, even one that paid significantly less than claimant was accustomed to earning, amounted to a situation of such gravity than a similarly situated reasonable and prudent person would conclude there was no reasonable alternative but to quit work. Generally speaking, to establish good cause for leaving a job a claimant “must derive some benefit from leaving work.” *See accord Oregon Public Utility Commission v. Employment Dep’t.*, 267 Or. App. 68, 340 P.3d 136 (2014) (“We pause to highlight an important underlying principle—for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit from leaving work.”). As far as claimant’s low pay was concerned, as discussed, he did not show that he derived a benefit by ending his employment because doing so also eliminated his income altogether, thereby worsening his situation rather than benefitting him. Nor does it appear likely that claimant derived a benefit to his job prospects, since quitting his job with the employer does not appear to have resulted in any immediate or quantifiable improvement to his career.² Claimant therefore did not show that his “dead end” job amounted to a grave situation such that he had good cause to quit his job because of it.

For the foregoing reasons, we conclude that claimant voluntarily left work without good cause. Claimant is therefore disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-85141 is set aside, as outlined above.

² To the extent claimant derived a benefit from quitting because doing so eliminated his commute, and notwithstanding that he did not like the 45-minute commute, his commute was not one of the primary reasons he identified for leaving his job, and he did not show why his 45-minute commute to work was so grave that no reasonable and prudent person would continue to work in a job that entailed such a commute. He had, previously, demonstrated his willingness to relocate his residence to accommodate a change in his job location when he moved from Olympia, Washington to the Beaverton, Oregon area to accept a transfer. He also accepted the transfer to the Gresham store with the understanding that, although the transfer was supposed to be temporary, he would need to commute from Beaverton in order to work there. Under those circumstances, claimant did not show that his commute was grave, and, as such, the benefit he derived by eliminating his commute was not the sort of legally significant benefit that, in and of itself, would support a finding of good cause.

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

DATE of Service: July 12, 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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