

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0763**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90650). Claimant filed a timely request for hearing. On June 20, 2017, ALJ M. Davis conducted a hearing, and issued Hearing Decision 17-UI-86146, affirming the Department's decision. On June 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Marathon Enterprise LLC employed claimant from December 1, 2015 until February 13, 2017 as its nurse case manager.

(2) Prior to January 20, 2017, claimant worked 40 hours per week for an annual salary of \$65,000 (\$31.25 per hour). On January 20, 2017 the employer told claimant her work hours would be reduced to eight hours per week, at \$31.88 per hour, effective February 20, 2017.

(3) On February 10, 2017, claimant told the employer she planned to quit on Friday, February 17, 2017 because the employer reduced her hours.

(4) On February 13, 2017, the employer discharged claimant because claimant's supervisor believed claimant preferred to be discharged immediately so she could attend interviews for work in Portland, Oregon.

(5) Although claimant sought work in Portland, Oregon after she quit, she returned to Lostine, Oregon and looked for work there for four days per week. Claimant could have continued to work for the employer for eight hours per week during that time.

**CONCLUSIONS AND REASONS:** We conclude the employer discharged claimant, not for misconduct, within 15 days of claimant's planned voluntary leaving without good cause.

The first issue is whether claimant quit work or was discharged. If the employee could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee was willing to continue to work for the same employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

Claimant told the employer she planned to quit on February 17, 2017. However, the employer discharged claimant on February 13, 2017, before claimant’s planned quit date. Because claimant was willing to work until February 17, but the employer did not permit her to do so, the work separation was a discharge.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. 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. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer had the right to expect of an employee.

The record shows that the employer discharged claimant to facilitate claimant’s transition to another job, and not due to claimant’s willful or wantonly negligent violation of any reasonable employer standard of behavior or willful or wantonly negligent disregard of the employer’s interest. Accordingly, the employer discharged claimant, not for misconduct as defined under ORS 657.176(2)(a) and OAR 471-030-0038(3)(a).

However, ORS 657.176(8) provides that when an individual has notified an employer that she will quit work on a specific date, and the employer then discharges her, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that she is 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 quit date. Claimant notified the employer she would end her employment on February 17, 2017. The employer discharged claimant, not for misconduct, on February 13, 2017, less than 15 days prior to claimant’s planned quit date. Therefore, the next issue is whether claimant’s planned quit would have been with or 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). Where, as here, 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 unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). Claimant did not

assert or show that continuing to work for the employer substantially interfered with her search for full time work. Claimant could have continued to work eight hours per week, and would have had time to look for full time work when she was not working for the employer. Nor did claimant assert or show that the cost of working for the employer exceeded the \$255.04 she would have earned per week had she continued working. Claimant therefore failed to establish that she quit work with good cause.

In sum, claimant notified the employer of her intention to quit work without good cause, but was discharged within fifteen days of the date of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits beginning the week when her planned quit would have occurred, which is the same week she was discharged. Because the planned quit and the discharge occurred in the same week, claimant is not eligible for additional weeks of benefits under ORS 657.176(8).

**DECISION:** Hearing Decision 17-UI-86146 is affirmed.

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

**DATE of Service:** July 20, 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](http://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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