EO: 200
BYE: 201815

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0815

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 123555). Claimant filed a timely request for hearing. On June 21, 2017, ALJ Amesbury conducted a hearing, and on June 27, 2017 issued Hearing Decision 17-UI-86638, affirming the Department's decision. On July 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that included a COBRA Information and Continuation Offer dated March 16, 2017 that was apparently provided to him by the employer. Claimant did not offer this document as evidence during the hearing, and his explanation for not doing so was that he "didn't think to double check" if the date his employment terminated was March 9, 2017 or some other date. Claimant's Written Argument at 2. OAR 471-041-0090 (October 29, 2006) authorizes EAB to consider evidence not offered during the hearing, the party offering that new evidence must show that factors or circumstances beyond the party's reasonable control prevented it from presenting that evidence during the hearing. A party is expected to reasonably prepare in advance for a hearing and to gather and present at hearing all evidence in support of its position. Administrative decision # 123555 placed claimant on notice that a principal issue at the hearing would be whether the work separation was a voluntary leaving or, as he contended at hearing, a discharge and claimant acknowledged at hearing he knew the employer's position was that he quit work and the nature of the work separation was going to be significant hearing issue. Transcript at 5, 6. That claimant did not think to "double check" before the hearing if the COBRA document would support his hearing position was not a factor or circumstance beyond claimant's reasonable control. For this reason, EAB did not consider claimant's new evidence when reaching this decision. EAB considered only information received into evidence during the hearing when reaching its decision.

In addition, even if we had considered claimant's COBRA Information and Continuation Offer, it would not have changed the outcome of this decision. In his written argument, claimant asserted that because

the COBRA document indicated in one place "Termination on the Qualifying Event Date of 03/17/2017" and in another place "Qualifying Event Date: 03/07/2017," it showed that he was actually discharged from employment on March 7, 2017. According to claimant, this document indicates that the testimony of the employer's witness – that claimant quit because he was processed out of the employer's system on March 9, 2017 – should be disregarded. Claimant's Written Argument at 2, 7, 9. However, the COBRA document does not distinguish between discharges and voluntarily leavings, both of which could plausibly be considered terminations of the employment relationship for purposes of a COBRA qualifying event. In addition, viewing only the COBRA document, it is not clear if the date of the qualifying event was determined for COBRA purposes as occurring immediately after the end of claimant's last shift working for the employer or if it was the later date on which the work separation might have occurred or on which the employer processed claimant's separation from employment for other internal purposes. As such, the COBRA document does not unambiguously indicate either the nature of the work separation or the date on which the separation occurred for unemployment insurance purposes.

FINDINGS OF FACT: (1) Sprint United Management Co. employed claimant as a sales representative from sometime in March 2016 until March 9, 2017.

(2) The employer's store at which claimant worked was located inside a Radio Shack store in Canby, Oregon. Sometime before March 2017, the employer was notified that some Radio Shack stores were scheduled to close, including the Radio Shack in Canby. The employer planned to transfer the employees working in its stores at Radio Shack locations, if they were willing, to other of its stores. By March 2017, claimant was aware that the Radio Shack in which his store was located was going to close and the employer was going to transfer him to another location. Around that time, the district manager for claimant's store also told claimant that he would be transferred like multiple other employees.

(3) On Tuesday, March 7, 2017, claimant reported to work at the Canby location. Sometime that day, the district manager for claimant's store told him was reassigned to the employer's store in Clackamas, Oregon and would not be working at the Canby location effective that date. The district manager told claimant not to report for any work at the Canby location, even if it was already scheduled for work there, and that he needed to contact the manager of the Clackamas location for information about his work schedule and when to next report for work.

(4) On Wednesday, March 8, 2017, claimant did not report for work since he did not know when he was expected to begin working at the Clackamas location. That day, the manager of the Clackamas store saw in her computer records that claimant had officially been transferred to the Clackamas store effective immediately. The manager called claimant but was unable to reach him directly. The manager then sent a text message to claimant welcoming him to the Clackamas store. Claimant replied to the manager's text message and inquired about his upcoming work schedule. The manager sent claimant a text message in response giving him his schedule for Thursday and Friday, March 9 and 10, 2017 and telling him that she would shortly create a formal schedule for the next week.

(5) On Thursday, March 9, 2017, claimant did not report for work at the Clackamas location. That day, claimant called the employer's human resources department inquiring about a final paycheck and whether he would receive payment for the paid time off he had accrued as of that time. A human resources representative called the manager of the Clackamas store, told the manager that claimant was

on another phone line and although he still appeared to be an active employee in the employer's system, he was requesting a final pay check,. After some discussion, the human resources representative told the manager that claimant had quit and the manager should process claimant out of the employer's system as an active employee assigned to the Clackamas store. The manager did so.

(6) On March 9, 2017, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

The employer contended that claimant voluntarily left work when he called the employer's human resources department on March 9, 2017 asking to receive his final paycheck and inquiring whether he would be paid for his accrued personal time off in that check. Transcript at 47, 51. Claimant denied contacting the human resources department and contended that the employer abruptly discharged him, without explanation, when a district manager informed him, for no apparent reason, that the employer had processed him out of its payroll system and its roster of active employees sometime after he was reassigned to the Clackamas store. Transcript at 5, 6, 55. The first issue this case therefore presents is the nature of the work separation. If claimant could have continued to work for the employer for an additional period of time when the work separation occurred, the separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the 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).

Claimant's account of the events leading to his alleged discharge was internally inconsistent, contradictory, and implausible. For example, claimant testified that he was "extremely surprised" and "shocked" when the district manager for his store told him that he was reassigned to the Clackamas store and "had absolutely no clue" that a reassignment was likely to be upcoming. Transcript at 10, 11. However, in other parts of the same testimony, claimant flatly contradicted his own statement when he testified that, in fact, he was planning on being transferred because that is what the employer's management had "told us they were going to do," that his district manager had told him "I'd get transferred [like] everyone" and "a lot of other representatives I knew were getting transferred." Transcript at 8, 17, 33. As well, according to claimant's account, he was told by his district manager that he no longer worked at the Canby store, that he needed to contact the manager of the Clackamas store to obtain more information, and was not able to later reach either one of the managers to receive additional details. Transcript at 8, 9, 10, 16, 17, 18. 22, 23, 24. However, claimant initially testified that his district manager left the Canby store for the Woodburn store very shortly after telling him he needed to contact the manager of the Clackamas store; after being repeatedly asked by the ALJ if he attempted to reach the district manager to inform her that he was unable to reach the Clackamas store manager for more instructions, he changed his initial testimony by stating he was unable to do so since the district manager had gone on an unexpected vacation. Transcript at 12, 15, 31. In addition, when the ALJ began to inquire pointedly into the reasons that claimant did not make more of an effort to contact the manager of the Clackamas store to learn his upcoming work schedule, claimant recalled for the first time that the district manager had told him when she informed him of his reassignment to the Clackamas store, that "if I do get transferred I wouldn't start for another couple of weeks. So she basically said I had no – no job for a couple of weeks." Transcript at 23. However, when the ALJ further pressed claimant about this testimony, he then abruptly reversed it and after some equivocation stated that the district manager had given him "zero information" about when he could expect to start work at the

Clackamas store. Transcript 25. Furthermore, as the ALJ began to explore in more detail claimant's efforts to obtain information about when he was expected to start work at the Clackamas store other than by unsuccessfully trying the reach the manager of that store, claimant remembered for the first time, that he had also been in contact with his direct manager, as opposed to the district manager, at the Canby location "the whole time" and that the manager "knew the entire situation the whole time," yet claimant had never earlier described a contact with this direct manager other than vaguely stating that the direct manager had, for no apparent reason, told him at some indefinite and unspecified time that he probably needed to find another job. Transcript at 32. Finally, claimant's testimony was never clear on why a district manager, other than the district manager who was responsible for the Clackamas and Canby stores, would be the one to tell him he was being processed out of the employer's system and why this was not done, according to his account, until he had failed to report for work at the Clackamas location for about two weeks. Transcript at 5, 7, 8, 34-35. Viewed in sum, based on its lack of internal cohesion, there is reason to doubt much of claimant's testimony.

In contrast to claimant's account of the work separation, the testimony of the employer's witness about it was detailed, cogent and logically consistent. As distinguished from claimant's that of the employer's witness also made sense in terms of the employer's corporate structure and a large scale effort to effectuate the transfers of a number of employees, including claimant. Because the employer's testimony was markedly more credible than claimant's, and was not reconcilable with it, we have accepted it for purposes of our findings of fact. Claimant's work separation was a voluntary leaving on March 9, 2017.

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.

Because claimant took the position at hearing that he was discharged, he offered no reasons for why he might have left work. Although the ALJ suggested in Hearing Decision 17-UI-86638 that claimant could have left work due to the distance he would need to commute to reach the Clackamas store, claimant mentioned in his hearing testimony only that the Clackamas store to which he was reassigned was 20 to 30 minutes from the Canby store, and did not raise the travel distance to the Clackamas store as any sort of a problem or inconvenience. Transcript at 11. Upon our review, there is no discernible reason in the record that might explain why claimant left work. As such, claimant did not meet his burden to show that grave reasons motivated him to leave work and that he had good cause for leaving work when he did.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-86638 is affirmed

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

DATE of Service: August 7, 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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