

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1089

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103312). Claimant filed a timely request for hearing. On August 24, 2017, ALJ Hoppe conducted a hearing, and on August 29, 2017 issued Hearing Decision 17-UI-91385, affirming the Department's decision. On September 12, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Geneva Woods Pharmacy employed claimant as an evening driver until May 31, 2017.

(2) The employer's hiring manager hired claimant on the condition that claimant was guaranteed weeknight shifts and to receive a minimum of three hours' pay no matter how many hours he actually worked each shift. Claimant accepted the job based upon those guarantees and an understanding that claimant and the hiring manager had about claimant's eventual placement in an IT position within the company. The hiring agreement claimant signed did not include those specifications, but the hiring manager scheduled and paid claimant in accordance with their mutual understanding.

(3) The hiring manager subsequently stopped working for the employer. On May 23, 2017, the employer offered claimant a new schedule that included weekends and more hours, and eliminated the three hours' pay guarantee. The employer notified claimant that the pay guarantee would be eliminated June 1, 2017.

(4) Claimant disagreed with the elimination of his pay guarantee. He was concerned that he could report to work and the employer would have no work for him, which would result in his receipt of pay for only fifteen minutes, and cost him more to drive to and from work than he would receive. Claimant quit work, effective May 31, 2017, before the employer eliminated the pay guarantee.

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 had understandable concerns that the employer eliminated the minimum pay guarantee and that it might cost him more to drive to and from work than he might receive, but the concerns were not a grave situation because at the time he quit working his concerns were prospective, if not speculative. He had not actually experienced a situation where he had to pay more to get to and from work than he received from working, nor had he experienced any negative consequences from the elimination of the minimum pay guarantee. Claimant had reasonable alternatives to quitting his job under the circumstances described, as well, including discussing his concerns with the employer, calculating how long a shift he would need to work to ensure that he earned more than working cost him, discussing what length shifts the employer planned to schedule him to work if not shifts lasting at least three hours, and determining whether his concern that the cost of working would exceed his remuneration from working was, in fact, likely to happen if he did not quit work. It is notable that the employer’s intent was to increase the number of hours claimant worked each week, making it unlikely that claimant’s wages from work were likely to decrease because of the elimination of his guaranteed minimum pay. Because the reason claimant quit work was not grave and he had reasonable alternatives to quitting, claimant did not establish that he left work with good cause. He is therefore disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 17-UI-91385 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: October 9, 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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