

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1456

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83227). Claimant filed a timely request for hearing. On December 6, 2017, ALJ Vaughn conducted a hearing, and on December 7, 2017 issued Hearing Decision 17-UI-98500, affirming the Department's decision. On December 16, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the parties' written arguments when reaching this decision to the extent they were relevant and based upon the hearing record.

FINDINGS OF FACT: (1) Nancy Sitz employed claimant as a rural mail delivery driver from 2005 to October 1, 2017.

(2) In 2017, claimant's hours were increased when the employee who shared his duties left work. Claimant worked five or six days a week and earned \$85 per day. Claimant did not incur personal costs because of his job, such as fuel costs or a uniform.

(3) During the summer of 2017, claimant and the owner negotiated about changes to claimant's work schedule but did not reach any agreements. On October 1, 2017, the owner went to claimant's house to tell him she had decided his hours were being reduced to three days per week and his pay increased to \$100 per day. Claimant told the owner he could not afford to work less than four days and still meet his expenses. The owner said she was only going to give him three days. Claimant said he would think about it, and the owner left.

(4) Claimant was not willing to keep working for the employer if the owner was only going to give him three days a week. Audio recording at ~ 18:15. He would have worked four days a week, but not three. Claimant called the owner shortly after she left and left a message for her that he still wanted to work four days. Claimant and the owner exchanged other communications in which they both reiterated their

positions. Ultimately, the owner told claimant that she wanted him to bring the mail delivery van back to her; claimant refused, and did not return to work for the employer thereafter.

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

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant and the employer disagreed about the nature of the work separation. Claimant argued at the hearing that he did not quit work and was, when the owner asked him to return the mail delivery van, “still negotiating” for a four-day per week schedule. Audio recording at ~ 32:15. The owner argued that negotiations, which had been ongoing throughout the summer, had ended, and that she had offered claimant three days of work per week and he had quit rather than accept it, prompting her to ask him to return the mail delivery van. Audio recording at ~ 36:30.

Regardless of the status of negotiations on October 1st, it is undisputed that, at all relevant times, the employer had available for claimant and was explicitly offering to him three days of work per week, and claimant refused the offer and continued to insist that the owner schedule him to work at least four days per week. Claimant’s behavior at that time objectively demonstrated that he was not willing to continue to work for the employer unless he was scheduled to work at least four days per week, and he repeatedly expressed his position on that to the owner. *See accord* Audio recording at ~ 18:15.

Claimant testified that he assumed he had been terminated from employment when the owner asked him to return the mail delivery van. Audio recording at ~ 17:15; 34:30. However, the owner did not ask claimant to return the mail delivery van until after he had repeatedly refused to accept her offer of three days per week of employment and insisted that he be scheduled to work four days, making her request a response to claimant’s refusal to accept the terms of continuing employment rather than a unilateral decision to end claimant’s employment. Under the circumstances, we find it more likely than not that claimant could have continued to work for the same employer three days per week for an indefinite period of time after October 1st, and chose not to do so because he wanted to work an additional day every week. The work separation was, therefore, a voluntary leaving.

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). 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 quit work due to the reduction in hours and the corresponding effect the reduction in hours would have on his pay.¹ Since 2017, claimant had been working five or six days a week. He felt he needed to continue working at least four days a week to meet his expenses, and the employer was only offering him three days of work per week. OAR 471-030-0038(5)(e) provides that “[i]f 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.” Claimant did not incur any personal costs because of his job, such as the cost of fuel to commute to work or the cost of purchasing or maintaining a uniform, nor did he establish that any such costs would have exceeded the \$300 per week he would earn from continuing to work a three days per week schedule.

Claimant believed that had he accepted the owner’s offer of three days of work per week, the owner would likely have scheduled him to work Mondays through Wednesdays. Audio recording at ~ 34:45. He argued that continuing to work for the employer for three days a week would have substantially interfered with appointments he had to look for other full time work. Audio recording at ~ 18:35. There is no question that, had claimant continued working for the employer Mondays through Wednesdays, he would have had to schedule appointments and perform work seeking activities around his work schedule. However, claimant did not assert or show how needing to schedule appointments for other weekdays or a weekend would have substantially interfered with his ability to seek or return to full time work such that continuing to work for the employer was no longer feasible in light of his need to secure new work, nor did he show that he could not have taken time off work if he needed to attend appointments that had to be scheduled for Mondays through Wednesdays. Therefore, although it is likely that claimant could have experienced some interference in how he sought work had he not quit his job, the preponderance of the evidence fails to support his claim that such interference would have been substantial, such that he had good cause to quit work because of it.

For the reasons explained, claimant voluntarily left work without good cause. He is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 17-UI-98500 is affirmed.

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

DATE of Service: January 19, 2018

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.

¹ Although claimant’s gross pay was going to be reduced as a consequence of his reduction in hours, the employer’s October 1st offer was actually to increase his rate of pay from \$85 per day to \$100 per day. We need not and do not analyze whether the change to claimant’s rate of pay under OAR 471-030-0038(5)(d) because, despite the net reduction in his pay, the employer was increasing, not reducing, claimant’s rate of pay.

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