

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0237

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105545). Claimant filed a timely request for hearing. On February 14, 2018, ALJ Seideman conducted a hearing, and on February 22, 2018 issued Hearing Decision 18-UI-103724, affirming the Department's decision. On March 5, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant's residence was in Mossyrock, Washington. Until October 2017, claimant worked in West Linn, Oregon. He commuted to work once each workweek and paid room and board to stay with someone in the vicinity of his job. He worked 12-hour shifts with paid lunch breaks and earned \$23.00 per hour for that employer. In mid-October 2017 claimant became unemployed.

(2) While unemployed claimant looked for a new job. He heard Nike, Inc. was hiring and applied for a job. Nike, Inc. was located in Beaverton, Oregon, over 100 miles away from his residence. Claimant thought if he was hired to work for the employer he would commute to Beaverton once per workweek and pay room and board to stay with a friend in the area instead of commuting every day.

(3) On November 7, 2017, claimant attended a job interview with the employer's recruiter. He told the recruiter that he would need to earn \$15.00 per hour. The recruiter said she "could get you really close to that." Audio recording at ~ 8:10. Claimant thought that he would be scheduled to work 12-hour shifts and receive paid lunch breaks.

(4) On November 21, 2017, the employer offered to hire claimant. Claimant accepted the job. The employer did not discuss claimant's hourly wage. The employer scheduled him to begin work on December 4, 2017, and said his regular work schedule would include 11 ½ hour shifts on Fridays,

Saturdays, Sundays and alternating Mondays. The employer told claimant he would receive overtime after 10 hours each shift.

(5) On December 4, 2017 and December 5, 2017, claimant commuted to work in Beaverton for orientation shifts. He had not yet made arrangements to stay with his friend during his workweek. On December 8, 2017, claimant reported to work for his first regular shift and learned that the employer was paying him \$12.45 per hour rather than the \$15.00 per hour he had requested. Claimant also learned that the employer did not offer paid lunch breaks.

(6) Claimant had not worked out the exact costs but thought it would cost several hundred dollars per month to commute from Mossyrock to Beaverton, to stay with his friend, and pay for extra food. He was concerned about paying those costs while earning \$12.45 per hour rather than hourly wage he had requested.

(7) The employer had scheduled claimant to work on December 9, 2017 and December 10, 2017. Claimant told the employer he would be absent from work both days. On December 11, 2017, claimant called the employer and quit his job because the pay rate was lower than he had expected, and because the employer only offered 11 ½ hour shifts without paid lunch breaks instead of 12 hour shifts.

CONCLUSIONS AND REASONS: We agree with the Department and 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). Where the gravity of the situation results from his own deliberate actions, actions of the individual in creating the grave situation must be examined in accordance with OAR 471-030-0038(4). OAR 471-030-0038(5)(f). 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 because the hours and pay rate were not what he had expected. Notably, however, the record fails to show that the employer had ever promised to schedule claimant for a particular number of hours, 12-hour shifts, or paid lunch breaks, nor does the record show the employer agreed to pay claimant a particular hourly wage. At the time claimant accepted the employer’s offer of employment, the employer did not disclose the details of claimant’s hours and pay rate, and claimant did not ask. Upon learning of the hours and pay rate, claimant was understandably concerned about the cost of commuting over 100 miles to work and paying for room and board in the vicinity of the employer’s facility, which could amount to hundreds of dollars each month. However, the record shows that claimant would earn between \$429.52 and \$572.70 per week working for the employer, totaling over

\$2,000.00 gross wages each month.¹ He therefore did not show that the costs associated with working over 100 miles from his residence would exceed his earnings, or reduce his earnings to such an extent that no reasonable and prudent person would have continued to work for the employer because the costs were too high. To the extent the costs of the commute and room and board in Oregon might have amounted to a grave situation, it appears that claimant created the gravity of the situation by applying for and accepting work located over 100 miles from his residence and did not establish that he did so for reasons of such gravity that he had no reasonable alternative but to do so. Claimant therefore voluntarily left work without good cause. He is therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 18-UI-103724 is affirmed.

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

DATE of Service: April 4, 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.

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¹ 11.5 hours per day, 3 days per week, at \$12.45 per hour equals \$429.52. 11.5 hours per day, 4 days per week, at \$12.45 per hour equals \$572.70. Claimant’s gross earnings during weeks he worked Fridays, Saturdays and Sundays would therefore equal \$429.52. During weeks he also worked Mondays his gross earnings would equal \$572.70.