

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0059

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 14, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #114442). Claimant filed a timely request for hearing. On December 19, 2013, ALJ M. Davis conducted a hearing, and on December 31, 2013 issued Hearing Decision 13-UI-07391, affirming the Department's decision. On January 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Oregon Bolt, Inc. employed claimant from May 1, 2013 to October 30, 2013 as a warehouse worker.

(2) On October 28, 2013, claimant was working in the employer's warehouse with a coworker. The coworker told claimant he was upset because claimant took two days off from work and created additional work for other employees. The coworker told claimant, "I think you are a piece of shit. And I should just take you outside and kick your ass." Transcript at 6. Claimant and the coworker began to argue and yell at each other. The warehouse manager overheard the yelling, and brought claimant and the coworker into the conference room to discuss the situation. Claimant behaved in an argumentative manner towards the coworker during the meeting, so the manager ended the meeting. The employer told claimant and the other employee he would decide what to do next, sent both employees back to work, and instructed them to stay away from each other. Claimant worked in the warehouse. The other employee drove a sales route for the employer.

(3) Claimant returned to work, but continued to see the coworker who had threatened him while he was working. Claimant felt anxious and unsafe, so he left work. The manager called claimant, and claimant told the manager he probably would not return to work. The manager told claimant the employer expected to see him on October 30, 2013, his next scheduled workday.

(4) Claimant had not been threatened at work before October 28, 2013. Claimant had seen one employee act out in an angry manner at work, and had heard arguments between employees before. The behavior during those incidents was not directed at claimant, and he did not report those incidents to the employer.

(5) On October 30, 2013, claimant voluntarily left work because a coworker threatened to hurt him.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude claimant voluntarily left work 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). “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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

At hearing, claimant asserted that he quit work because a coworker threatened to harm him, and that he believed the work environment was unsafe for him. Although claimant had not been threatened at work before, he argued that he felt unsafe due to the October 28 incident and other displays of anger at work, not directed at claimant, which the employer did not address. Transcript at 18. Claimant’s argument is not supported by the record. Claimant did not report the other incidents to the employer, nor did he show that the employer knew about the incidents involving other employees. Moreover, the manager addressed claimant’s situation on October 28 immediately when he overheard claimant and his coworker arguing. Claimant refused to fully participate in the meeting with the manager, and instead quit work without further attempts to resolve the situation. Claimant did not show that discussing his continuing safety concerns with the employer would have been futile. Absent a preponderance of the evidence showing that the employer was unwilling or unable to resolve claimant’s safety concerns, we cannot find that claimant had no reasonable alternative but to quit work. Claimant quit work without good cause and is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 13-UI-07391 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: February 10, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.