

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0063

Reversed
Disqualification

PROCEDURAL HISTORY: On November 8, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #135417). Claimant filed a timely request for hearing. On January 7, 2014, ALJ Seideman conducted a hearing, and on January 8, 2014 issued Hearing Decision 14-UI-08117, concluding claimant voluntarily left work with good cause. On January 10, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. The employer's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer 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) Southern Wine Group employed claimant as its controller from February 14, 2013 to October 17, 2013. The employer imported wines from Latin America for sale in the United States.

(2) Claimant's job duties included maintaining the employer's accounts, paying bills, and advising the employer about day-to-day financial matters.

(3) On or about July 31, 2013, the employer received notice of a \$36,000 wire transfer from one of its wine suppliers in Argentina. Claimant was not able to determine the purpose of the funds or if they were sent for a legitimate business expense in the United States. Claimant told the employer's president

that he suspected the wire transfer was sent in an attempt to “launder” the money through the employer’s bank account to a third party’s bank account outside of Argentina. Claimant advised the employer to reject the wire transfer, and the employer agreed and rejected the transfer. Instead of returning the funds to the supplier, the Central Bank in Argentina held the funds. The supplier became upset because neither the supplier nor the third party received the funds. The employer was concerned the money might be usurped by that bank, and told claimant to get the funds back from the bank in Argentina, and to find a legal way to return the money to the supplier. The employer received the funds into its account.

(4) Claimant and the employer were uncertain about how to distribute the funds, and claimant recommended the employer hire an accounting firm for advice. The employer hired the accounting firm. Neither the accountants nor the employer’s personnel were able to identify a clear answer about how to transfer the money out of its account. The accounting firm identified one problem with the employer’s accounts, and the employer corrected the problem. Claimant told the employer to transfer the funds to the third party by check. The employer prepared the check. Claimant later recommended the employer cancel the check to avoid potential further liability. The employer canceled the check.

(5) Claimant was concerned the employer might be improperly invoicing and labeling inventory to reduce U.S. customs taxes. Other than the wire transfer incident, claimant did not tell the employer he had concerns about the employer’s practices.

(6) On October 17, 2013, claimant consulted with an attorney, and his attorney recommended he resign from his position as controller.

CONCLUSIONS AND REASONS: We disagree with 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 he proves, by a preponderance of the evidence, that he 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) (August 3, 2011). 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 his employer for an additional period of time.

Claimant asserted he quit work because he believed he had committed a crime through wire fraud while working as controller for the employer. However, claimant did not establish by a preponderance of the evidence that he or the employer engaged in illegal activity regarding the wire transfer. Claimant’s attorney recommended he quit his job, but the record does not show what information claimant provided to his attorney, or whether the attorney’s recommendation was based on concerns about the employer’s alleged illegal activities, rather than some other reason. However, to the extent claimant believed he was liable for criminal activities, he failed to show that the wire transfer incident was a repeated practice, or that the employer required him to act as he did. On the contrary, the record shows the employer followed claimant’s direction and advice about how to address the wire transfer. Moreover,

assuming claimant was liable for criminal activities, he did not show that leaving work would absolve him of the crimes or minimize his liability. Rather than quitting work when he did, claimant had the reasonable alternative of continuing to work for the employer.

To the extent claimant left work due to concerns about the employer's alleged practices to decrease its U.S. customs taxes, claimant did not quit work for good cause. The evidence about whether the employer used fraudulent invoices or encouraged its suppliers to mislabel their product, and whether it required claimant to be complicit in those activities, was equally balanced between the parties. Thus, claimant has failed to prove by a preponderance of the evidence that the employer violated the law or that it required claimant's complicity in doing so. Moreover, rather than leaving work, claimant had the reasonable option of discussing his concerns with the employer. He also could have recommended the employer seek legal advice concerning the alleged practices. Claimant failed to show that pursuing those options would have been futile.

In sum, claimant failed to show that he left work for reasons of such gravity that he had no reasonable alternative but to quit. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-08117 is set aside, as outlined above.

DATE of Service: February 11, 2014

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

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.