

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0100

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On October 15, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110352). Claimant filed a timely request for hearing. On December 23, 2013, ALJ M. Davis conducted a hearing at which the employer did not appear, and on December 31, 2013 issued Hearing Decision 13-UI-07432, affirming the Department's decision. On January 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) EAN Holdings, LLC/Enterprise Rental employed claimant as a service agent from December 31, 2003 until April 24, 2013. In the workplace, running vehicles emitted exhaust and chemicals were sprayed.

(2) At some point during his employment, claimant thought that his exposure to vehicle exhaust fumes and chemicals was making him ill. In 2011, claimant went to a hospital emergency room, but the physicians there could not find anything wrong with him. Claimant went to another physician sometime in April 2013 who performed blood tests, but that physician also did not find anything wrong.

(3) In early April 2013, claimant told the employer he was quitting. Claimant did not inform the employer that he believed workplace exposure to exhaust fumes and chemicals were making him ill.

(4) On April 24, 2013, claimant left the workplace and did not return.

CONCLUSIONS AND REASONS: 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 testified that he quit work because he believed that exposure in the workplace to vehicle exhaust fumes and chemicals was making him ill and causing him to experience blurred vision and shortness of breath. Audio at ~9:50; ~16:40. Claimant's manner while testifying and the substance of his testimony did not inspire confidence in its reliability. When the ALJ inquired into the specifics of what claimant told the employer when he gave notice he was going to quit, claimant's testimony became halting, with pauses and silence and requests to the ALJ to repeat her questions, as if groping for what to say. See Audio at ~13:35; ~14:20; ~15:00. In addition, while claimant initially testified he gave the employer notice he was going to quit in early April 2013, he could not state even the approximate date he told the employer was to be his last day. Audio at ~8:26; ~14:20. Claimant also testified he had not planned to quit on April 24, 2013, but was unable to explain what, if anything happened on that day that caused him to decide to leave work. Audio at ~11:21; ~13:09; ~13:35; ~15:00. Claimant further contended he tried to transfer to another of the employer's facilities where he would not be exposed to vehicle exhaust fumes or chemicals, but he was unable to state even the approximate time when he sought those transfers. Audio at ~12:20; ~12:40. Finally, although claimant testified emphatically at several times that he did not give the employer any reason for quitting, he also testified at one point that, after he told the area manager he was quitting, the area manager posted notices "about cars running and stuff," which, if true, tends to suggest that he told the manager about the effects of the exhaust fumes. Audio at ~8:26; ~10:49; ~11:08; ~13:35; ~14:12; ~16:15. From claimant's demeanor while testifying and the vagueness and contradictions in important aspects of his testimony, its credibility is doubtful.

Although claimant's testimony about the symptoms he experienced suggested that they were serious, he also stated that he went to at least two physicians for treatment and neither could find anything wrong with him. Audio at ~10:16; ~18:15. In addition, although claimant contended he experienced these symptoms for some years before deciding to quit, it is implausible that a person experiencing the described symptoms would have remained working. Audio at ~10:44. Moreover, claimant did not present any objective evidence that tied the symptoms he contended he experienced to the workplace environment. Based on the undisputed fact that no medical professionals were able to corroborate claimant's symptoms and the dubiousness of his testimony about the seriousness of the symptoms, claimant did not meet his burden to establish by a preponderance of the evidence that his physical condition was a grave reason for him to leave work.

Even had claimant established that his symptoms were serious, he did show that he took the actions of a reasonable and prudent person, exercising ordinary common sense. A reasonable and prudent person would not have concluded he needed to quit work until he notified the employer that the workplace was making him sick and reasonably determined the employer was not going to take steps that to alleviate the impacts of the workplace environment on his health. Despite the actions a reasonable person would have taken, claimant insisted he quit without giving the employer a reason and without giving the employer an opportunity to address his concerns. Audio at ~10:49; ~11:08; ~13:35; ~14:12; ~16:15.

Claimant did not demonstrate good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 13-UI-07432 is affirmed.

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

DATE of Service: February 13, 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.