

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0111

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 21, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #74048). Claimant filed a timely request for hearing. On December 5, 2013, ALJ Seideman conducted a hearing, and on December 17, 2013 issued Hearing Decision 13-UI-06743, affirming the Department's decision. On December 31, 2013, the ALJ issued Amended Hearing Decision 13-UI-07465, amending Hearing Decision 13-UI-06743 to include the first day of the disqualification. On January 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Southern Oregon University employed claimant from February 1, 2006 to September 23, 2013 as a custodian.

(2) During 2013, claimant's immediate supervisor began to increase claimant's work duties. Claimant had to complete his own work and the work of other employees when they were absent from work. Additionally, the employer hired a new coordinator. The coordinator frequently reviewed and criticized claimant's work. The increased workload and the criticism from the new coordinator caused claimant stress. Claimant did not seek medical attention regarding the stress.

(3) On approximately September 16, 2013, claimant called in sick and missed work because he had to take his wife to the hospital for treatment for uterine cancer. While claimant and his wife were at the hospital, the coordinator drove past claimant's house while traveling from one job site to another. The next day, the coordinator told claimant he had driven past the claimant's house, and that he thought claimant lied about being sick. Claimant provided evidence that he had taken his wife to the hospital. The coordinator told claimant that he still believed claimant was a "liar." Audio Record ~ 10:47.

(4) On approximately September 17, 2013, claimant complained to his supervisor about the coordinator's comment. The supervisor told claimant he would discuss the matter with the coordinator. Claimant complained to the human resources about his increased workload and the incident when the coordinator drove by his home. The human resources representative said it would investigate and address the incident.

(5) On September 23, 2013, several minutes before claimant's shift was scheduled to end, his supervisor and the coordinator approached him and told him to go clean a water leak near a toilet. Usually, if the supervisor had additional work it expected claimant to complete, he told claimant at least thirty minutes before his shift ended. Claimant worked ten minutes past the end of his shift. The employer did not require claimant to work without pay.

(6) On September 23, 2013, claimant voluntarily left work due to work stress and because the employer required him to work ten minutes of overtime to clean a water leak.

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 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 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 quit work because he was required to work ten minutes past the end of his shift, and because of stress due to his increased workload and the perceived mistreatment from his supervisor and coordinator. To the extent claimant quit work because the employer required him to work ten minutes of overtime, claimant did not show he had good cause to quit. It was reasonable for the employer to ask claimant to clean a water leak in the bathroom because claimant was a custodian. The task took only ten minutes, and there was no evidence that the employer refused to pay claimant for that time. The record does not show that having to work an additional ten minutes created a situation so grave that claimant had no reasonable alternative but to leave work.

To the extent claimant quit due to work stress, claimant failed to show that he quit work for good cause. Claimant experienced stress from his increased workload and from what he perceived to be mistreatment from his supervisor and coordinator. Claimant did not show that the stress was so severe that he had no reasonable alternative but to quit. Claimant asserted that his supervisor scrutinized his work more than others' work, and claimant was understandably upset that the coordinator drove by his home when he called in sick. However, claimant did not show that their behavior created working conditions so oppressive that no reasonable and prudent person would have continued to work for his employer for an additional period of time. Claimant had the reasonable alternative of waiting to see if the employer's

human resource department would address his complaints. Moreover, rather than quitting due to stress, a reasonable and prudent person would have sought medical advice before quitting.

We therefore conclude that claimant quit work without good cause, and that he is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 13-UI-07465 is affirmed.

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

DATE of Service: February 18, 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.