

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0225

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On November 18, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #93902). Claimant filed a timely request for hearing. On January 21, 2014, ALJ Clink conducted a hearing, and on January 31, 2014 issued Hearing Decision 14-UI-09665, affirming the Department's decision. On February 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Cross Point NW employed claimant from January 1, 2012 to October 7, 2013 as a lead driver. The employer operates dealer-only automobile auctions.

(2) Claimant chose to work two long shifts to reduce his commuting expenses. The employer was willing to allow claimant to work four shorter shifts spread over four days. Claimant did not ask the employer to reduce the number of hours he worked per shift.

(3) Claimant worked Mondays from 10:00 a.m. to 6:00 p.m., and Tuesdays from 10:00 a.m. continuously until Wednesday at 4:00 p.m. It took claimant 1.5 hours to drive between his home in McMinnville, Oregon and his work location in Southeast Portland, Oregon. Claimant rode with another employee to and from work until approximately October 1, 2013, when the other employee quit work. Claimant found it difficult to stay awake while driving himself home after his long shifts.

(4) Claimant was one of two lead drivers for the employer. The lead driver would transport other drivers to pick up vehicles to drive back to the employer's location. Claimant and the other lead driver disliked two of the drivers. Claimant had the two drivers he disliked on his work crew more often than the other lead driver did. On October 7, 2013, claimant became upset because one of the drivers claimant disliked was on his crew for his next work assignment.

(5) On October 7, 2013, claimant quit because he had the drivers he disliked in his work crew more often than the other lead driver did, and because he was concerned for his safety driving home on Wednesdays at the end of his shift.

**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). 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, in part, because he had the “problem people” in his crew more often than the other lead driver did. Audio Record ~ 11:19 to 11:53. A coworker’s behavior can be good cause for leaving work if it is ongoing “abuse” or creates an ongoing “oppressive” work environment.<sup>1</sup> Here, the record does not show the “problem” drivers’ conduct rose to the level of abuse or oppression recognized as good cause to leave work. Claimant did not describe conduct that would cause a reasonable and prudent lead driver, exercising ordinary common sense, to conclude he had no reasonable alternative but to quit work. Claimant’s situation was not of such gravity that he could not have continued to work for an additional period of time.

Claimant also quit work because he was concerned about his safety while driving after working continuously from Tuesday morning to Wednesday afternoon. Claimant’s concern was reasonable. However, claimant failed to show that he had no reasonable alternative but to quit. Claimant could have worked shorter shifts spread over four days. Claimant failed to show no reasonable and prudent person would have asked the employer to reduce the number of hours he worked per shift rather than quitting.

In sum, claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-09665 is affirmed.

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

---

<sup>1</sup> See *McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to “sacrifice all other than economic objectives and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (supervisor’s regular fits of temper and verbal abuse); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management’s ageist comments and attitudes); *Pamela A. Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor’s ongoing verbal abuse).

**DATE of Service: March 4, 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.