

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0247

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 12, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 71444). Claimant filed a timely request for hearing. On January 14, 2014, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on February 6, 2014, issued Hearing Decision 14-UI-09980, affirming the Department's decision. On February 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Knight Transportation, Inc. employed claimant as a long-haul truck driver from August 16, 2013 until October 14, 2013. Claimant was in training until approximately October 1, 2013. On approximately October 1, 2013, claimant started driving routes unaccompanied.

(2) The employer had various hauling routes in eleven western states and Canada. When the employer hired him, claimant told his supervisor he wanted to drive the route through Washington state into Canada. He specifically told the supervisor he did not want to drive any route that took him into California. During the two weeks that he drove alone for the employer, claimant was never assigned to drive to Canada. Despite his expressed preference, he was generally assigned to routes that took him into California.

(3) On approximately October 13, 2013, after claimant had been out of training for only two weeks and had only driven only five or six routes unaccompanied, the dispatcher assigned him to drive from Portland, Oregon to Fremont, California. After the dispatcher told claimant he could unload his truck at any time after he reached Fremont, claimant planned his route and started to drive. On October 13, 2013, claimant reached the delivery location at approximately midnight. At the delivery site, workers told claimant that his delivery appointment was scheduled for 5:00 a.m. and he could not unload his truck until that time. The workers told claimant that he needed to park his truck off-site and wait. Claimant parked his truck in the center meridian of a public street near the delivery site and waited. At

that time, claimant was nearing the end of both the 11 hour period that he was allowed to drive his truck and the 14 consecutive hour period he was allowed to be on duty without taking 10 hours off, as required under federal motor carrier safety regulations. On October 14, 2013, at approximately 4:00 a.m., workers from the delivery site came to claimant's truck and told him they were able to unload the truck. At approximately 6:30 a.m., the workers completed unloading claimant's truck and told claimant he had to leave the delivery site. At that point, claimant had exceeded the 14 hour period he was allowed to remain on duty and was prohibited from further driving his truck until he had 10 hours off. Claimant explained the situation to the workers at the delivery location, but they insisted that claimant leave. Because it was against the law in California to park a commercial truck on a city street, claimant could not determine what to do to avoid either violating either state laws by parking his truck on a street or federal motor carrier regulations by driving his truck to a location where he could lawfully park the truck. Claimant called the dispatcher, his supervisor and several of the employer's offices but, at the early morning hour he was calling, he could not reach anyone.

(4) While still at the delivery site, using the computer and GPS in his truck, claimant determined that the nearest location where he could lawfully park his truck was a truck stop approximately 20 miles away. Although he was prohibited from further driving under the motor carrier regulations, claimant nonetheless drove to the truck stop. Although he had to enter three weigh stations en route to the truck stop, claimant was not cited for any traffic or regulatory violations. When he reached the truck stop, claimant called and was finally able to speak with the dispatcher. Claimant told the dispatcher what had happened and that, because the dispatcher had not given him correct information about the delivery time, he had not been able to schedule his on duty and driving time to avoid violating the federal motor carrier safety regulations. The dispatcher told claimant everything was fine because he had reached the truck stop. Claimant then told the dispatcher he was quitting work. On October 14, 2013, claimant left work.

(5) Claimant did not discuss his dissatisfactions with his direct supervisor, who was also the dispatcher's supervisor, before he decided to quit.

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.

Based on claimant's testimony and the timing of his decision to quit work, the proximate cause of his leaving was the events that occurred on October 14, 2013. Claimant's testimony about the consecutive hours he was permitted to drive and remain on duty without violating federal motor carrier safety regulations was correct, as well as his testimony that he was personally subject to significant fines if he violated those regulations. *See* 49 CFR §395.3; 49 CFR §386, Appendix B. We accept claimant's

testimony that, when he drove to the truck stop on October 14, 2013, he was, by necessity, in violation of those regulations. We recognize that violations of safety regulations can be serious matters. However, although claimant did nothing that contributed to the series of events that caused him to violate the regulations, it is significant that he did not contend that it was a practice of the employer to condone motor carrier safety violations or that he was aware of other instances where the employer had placed drivers in positions where violating the safety regulations was virtually inescapable. Claimant had only been driving unaccompanied for the employer for two weeks and, from his testimony, there was no basis for him reasonably to conclude that what occurred on October 14, 2013 was other than aberrational and an unfortunate amalgam of events. A reasonable and prudent truck driver, exercising ordinary common sense would not have concluded that his situation was grave and he needed to quit work based on a single instance when a dispatcher gave him incorrect delivery information and a delivery site would not cooperate to allow him to remain in compliance with federal motor carrier safety regulations. A reasonable and prudent driver would have waited a reasonable time, and would not have quit unless the subsequent actions of the employer showed a pattern of causing him to violate those regulations. In addition, claimant quit before raising the dispatcher's mistakes with his immediate supervisor and seeking some intervention to ensure that the events of October 14, 2013 would not recur. A reasonable and prudent truck driver, exercising ordinary common sense, also would not have quit work before discussing the events that had transpired with his and the dispatcher's supervisor and allowing that supervisor the opportunity to take actions to avoid similar events in the future. Because claimant did not take the actions of a reasonable and prudent person before leaving work, he did not show good cause for quitting.

Claimant did not meet his burden to demonstrate good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-09980 is affirmed.

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

DATE of Service: March 11, 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>.

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