

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0962

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #. Claimant filed a timely request for hearing. On May 21, 2014, ALJ Murdock conducted a hearing, and on May 23, 2014, issued Hearing Decision 14-UI-18293, affirming the Department's decision. On June 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him 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. We considered claimant's arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) Decker Petroleum Equipment employed claimant as its office manager from May 4, 2012 to April 9, 2014. The employer was a distributor of petroleum parts and equipment for at least two original equipment manufacturers (OEM).

(2) Throughout claimant's employment, claimant was bothered by the owner's practice of substituting less expensive "after market" parts manufactured to OEM specifications the owner obtained elsewhere for sales items sold to customers as OEM products. Transcript at 5. Shortly after beginning the employment, the owner directed him to store non-OEM parts out of view before an OEM manufacturer visit. Claimant believed the owner was being deceptive with the OEM manufacturer about substituting non-OEM parts and told the owner he thought the practice was unethical. However, the owner defended

the practice by stating the OEM manufacturer was aware of it, it was not illegal, standard in the industry and pointing out that its catalog included the following statement, included in other seller catalogs, amongst its terms and conditions of sales:

“Substitution of products of equal or superior quality may be made to improve service.”

Transcript at 23, 31-32. Claimant did not believe or agree with the owner’s explanation but did nothing further because he did not want to offend the owner and put his employment at risk.

(3) In November 2013, claimant became upset because he learned that the employer’s lone sales employee, who had less seniority than claimant, received more vacation hours. After he complained, the owner gave claimant equivalent vacation hours “but something changed in [claimant’s] attitude.” Transcript at 26.

(4) On March 30, 2014, claimant notified the owner by email that “selling [OEM] forgery parts and defrauding customers” was “unethical” and “may be illegal” and that “the time [had] come [for claimant] to remove [himself] from such liability.” Exhibit 1. He stated that although he appreciated the employment, the wage, the medical benefits and vacation time the employer provided, he would begin looking for new work immediately, while remaining employed, and had removed his belongings from his desk.

(5) On April 3, the owner met with claimant, said he intended to make some changes regarding the invoice descriptions of non-OEM parts that “could be misconstrued and unclear” and asked claimant what other improvements he wanted. Transcript at 24. On April 7, claimant suggested that his pay structure be changed from hourly to salary or a percentage of revenues or that he be allowed to establish his own business, which he was considering due to his limited compensation, while continuing to work for the employer. Exhibit 1. He also made suggestions regarding pricing, work duties and other company matters.

(6) On April 9, the owner responded that the parts descriptions of non-OEM parts on invoices and packing slips would be changed, essentially from OEM part to part for OEM equipment and that claimant could work as little as 30 hours per week without his benefits being reduced. Transcript at 7, 24; Exhibit 1. He also declined claimant’s suggestions regarding a changed compensation structure. Later that day, claimant told the owner “either lay me off or I’m quitting [and will] give my accusations to the Employment Department.” Transcript at 25. After the owner refused to lay him off, claimant quit.

(7) Claimant quit because he considered the employer’s business practice regarding the sale of non-OEM parts to be illegal and because he was unhappy with his compensation. Claimant did not verify whether the employer’s business practice was illegal before quitting.

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 (or she) 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 the employer for an additional period of time.

Viewing the record as a whole, claimant quit because he considered the employer's business practices regarding the sale of non-OEM parts to be illegal and unethical, wanted "to remove [himself] from such liability", and was unhappy with his compensation. The owner disputed that the practice was illegal or unethical based on the terms and conditions statement in the employer's catalog and legal advice he received after claimant's March 30 email, and claimant admitted he was unable to verify the illegality of the employer's practices. Transcript at 19, 23, 26-27. Although claimant asserts in written argument that the owner's directive to store away the non-OEM parts prior to the OEM's visit demonstrates the owner was being deceptive toward the OEM, there is also evidence in the record that the local OEM representative had been aware of the practice of substituting non-OEM parts for OEM parts. Exhibit 1. Consequently the evidence on those issues was no more than equally balanced, particularly when considering the employer's modified practice at the time claimant quit, after the owner agreed to change the parts descriptions on the employer's invoices and packing slips. Where the evidence is equally balanced, the party with the burden of persuasion, here, claimant, has failed to satisfy his evidentiary burden. Consequently, claimant failed to establish the offending business practices were illegal or unethical when he quit on April 9 or that quitting work for that reason was with good cause.

Although claimant did not specify that he quit work, even in part, due to his dissatisfaction with his compensation, we infer that fact from his April 7 email and his apparent willingness to tolerate the employer's offending business practices until his compensation requests were denied. Quitting work for that reason was without good cause. Claimant did not establish that his costs of working exceeded his compensation or that he was better off without any income than the hourly wages the employer was paying him. Although he may have been unhappy with his compensation, he failed to show that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense in his circumstances, would have continued to work for the employer for an additional period of time.

Claimant quit work without good cause. Accordingly, claimant is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-18293 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: July 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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