

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1233

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On May 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 125428). Claimant filed a timely request for hearing. On June 25, 2014, ALJ Micheletti conducted a hearing, and on June 26, 2014 issued Hearing Decision 14-UI-20402, affirming the Department's decision. On July 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record when reaching this decision. In Hearing Decision 14-UI-20402, that ALJ stated that Exhibit 1 was admitted into the record as evidence.¹ However, the ALJ excluded Exhibit 1 from the hearing record because the employer failed to provide a copy of the exhibit to claimant prior to the hearing. Audio Record at 7:00. EAB therefore did not consider Exhibit 1 when reaching this decision.

FINDINGS OF FACT: (1) Pacific Door & Sasch LLC employed claimant from February 17, 2014 to March 14, 2014.

(2) On March 14, 2014, claimant decided to terminate his employment.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

The first issue in this case is the nature of the work separation. OAR 471-030-0038(2)(b) (August 3, 2011) provides that if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a). "Work" means "the continuing

¹ Hearing Decision 14-UI-20402 at 1.

relationship between an employer and an employee.” OAR 471-030-0038(1)(a). An individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At hearing, claimant and his manager disagreed on the events leading to claimant’s work separation. Claimant’s manager testified that claimant notified him on March 14, 2014 that he was quitting work, and signed a resignation letter stating that was “willingly giving up my position” with the employer. Audio Record at 22:20. According to claimant, his manager offered to lay him off, and he accepted. Audio Record at 26:30. In either event, however, claimant could have continued to work for the employer for an additional period of time, either by not notifying his manager he was quitting work and signing a resignation letter, or rejecting his manager’s offer to lay him off. The work separation therefore is a voluntary leaving, and not a discharge.

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.

At hearing, claimant initially testified that he agreed to terminate his employment because his manager told him if he did not agree to do so, he likely would be discharged within a short period of time. Audio Record at 12:00. However, claimant later testified that he agreed to terminate his employment because he felt physically threatened by his supervisor and another employee, and his manager was unwilling to address the situation. Audio Record at 28:45. Claimant’s manager denied telling claimant he likely would be discharged, or claimant telling him he felt physically threatened by his supervisor or another employee.² Audio Record at 21:00. The evidence on those issues is, at best, equally balanced.

To the extent claimant quit work to avoid a possible discharge, he failed to show by a preponderance of evidence that his manager told him he would be discharged if he did not terminate his employment. To the extent claimant quit work because he felt physically threatened by his supervisor and another employee, he failed show that they engaged in conduct that would leave a reasonable and prudent person no reasonable alternative but to quit work, and that he gave the employer a reasonable opportunity to address the situation before he quit. Absent such showings, claimant failed to establish that he had no reasonable alternative but to quit work.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-20402 is affirmed.

² Claimant’s manager testified that claimant told him he was quitting work to return to work with his former employer. Audio Record at 18:00. However, claimant did not assert that he quit for that reason.

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

DATE of Service: August 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 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.