

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1284

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 27, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114934). Claimant filed a timely request for hearing. On July 17, 2014, ALJ M. Davis conducted a hearing, and on July 18, 2014 issued Hearing Decision 14-UI-21789, affirming the Department's decision. On July 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument which did not certify that he provided a copy to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant's argument also contained information about the employer that was not introduced into evidence at the hearing, and claimant failed to show that factors or circumstances beyond his reasonable control prevented him from offering that information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Because claimant did not comply with these requirements, EAB considered only information received into evidence at the hearing when reaching this decision. *See* OAR 657.275(2).

FINDINGS OF FACT: (1) USA Lawsuit Loans, Inc. employed claimant as a senior loan consultant from February 1, 2014 until February 12, 2014.

(2) Sometime after February 1, 2014, claimant's work computer was not working correctly. The computer problem was serious. It prevented claimant from speaking on the phone with the employer's customers and transacting any business. Claimant told the employer's owner about the problems with his computer. Sometime before February 12, 2014, the owner replaced claimant's computer.

(3) On February 12, 2014, the owner observed that claimant was not answering his work phone or taking calls from customers as he was expected to do. The owner asked claimant the reason he was not picking up the calls. Claimant asked to speak to the owner privately, and, when they were alone, claimant told

the owner that he was "very high" and not in a condition to speak to customers. Audio at ~19:13. The owner told claimant that reporting for work when he was high was unacceptable and not to do it again. Before the owner could say anything else, claimant "flipped out" and left the workplace. Audio at ~19:18, ~20:48.

(4) After he left the workplace on February 12, 2014, claimant did not report again for work. On February 12, 2014, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

The testimony of claimant and the employer's owner was in sharp conflict, with claimant contending that the owner discharged him and the owner contending that claimant quit work. Audio at ~7:19, ~13:02, ~19:18, ~20:43. The parties gave differing versions of the events leading to the work separation and disagreed on the date of the separation. Audio at ~7:20, ~13:02, ~18:15, ~18:26, ~20:43, ~22:15. It is impossible to reconcile the testimony of the parties, and there is no evidence in the record from which we can directly deduce a reason to prefer the testimony of one over the other. We have relied on the most logically plausible version of the described events in resolving the conflicting evidence about the work separation.

Claimant's contended that on March 1, 2014, after he reported to the owner that problems with his work computer prevented him from answering any customer calls, the owner picked up claimant's computer, dropped it on the floor in agitation and discharged claimant. Audio at ~12:05, ~13:02. Claimant's account is unlikely. Although the owner might have been agitated at learning claimant's computer was malfunctioning again, it is illogical that he would blame claimant for that occurrence rather than attempting to correct a problem that seriously impaired the employer's ability to conduct business operations. It also makes no sense that the owner would intentionally damage a relatively expensive piece of equipment, like a computer, simply as a prelude to discharging claimant. Claimant's further testimony that, after engaging in the angry outburst directed at him and discharging him, the owner then amicably drove claimant home is contrary to a common understanding of human emotions. Audio at ~13:16, *also* Audio at ~21:30. Based on the facts that he recited, claimant's account is not plausible. The owner's version of the relevant events, that on February 12, 2014, claimant reported for work when he was under the influence of some substance, and that, when the owner confronted him about his condition, claimant angrily left the workplace is at least logically plausible. Audio at ~19:18, ~20:43. Since the owner's account is the one more likely to have occurred, we conclude claimant's work separation was a voluntary leaving on February 12, 2014, and the events leading to the separation were, more likely than not, the events that the owner described.

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 the facts as we have found them, the only discernible reason that claimant left work was because the owner confronted him about reporting for work under the influence of some intoxicating substance. It does not appear that the owner had the time to do more than mention that it was unacceptable for claimant to report for work under the influence before claimant decided to quit. Audio at ~19:18. ~20:16. As a reasonable matter, an employer is within appropriate bounds in stating a belief that an employee has violated acceptable standards for workplace behavior. A reasonable and prudent employee, exercising ordinary common sense, would not have considered it a grave reason to leave work when the employer told him that it that was unacceptable to report for work under the influence of an intoxicating substance. If he was not under the influence, a reasonable and prudent employee would have explained his behavior before deciding to quit work.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-21789 is affirmed.

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

DATE of Service: August 28, 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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