

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1751

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause decision # 90132). Claimant filed a timely request for hearing. On October 16, 2014, ALJ Murdock conducted a hearing, and on October 24, 2014 issued Hearing Decision 14-UI-27526, affirming the Department's decision. On November 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dacon Industries employed claimant as its general manager from March 7, 2005 to August 7, 2014.

(2) On August 6, 2014, claimant began feeling ill and left work. After leaving work, claimant telephoned the employer's vice president and told that he was going home for the day. After returning home, claimant began to suspect that he was having a bad reaction to a chemical at work. Claimant sent the vice president text messages asking for an updated list of chemicals used by the employer, one of which stated that "they are waiting." Transcript at 49. The vice president mistakenly inferred that claimant was at the doctor's office, and informed the employer's controller that claimant was there asking for an updated list of chemicals used by the employer. The controller was concerned that claimant may have suffered a work-related injury and asked claimant to explain what had happened; he also instructed claimant to have the doctor fax or email a request for a list of chemicals used by the employer. Claimant became frustrated, and replied with a text message stating that he would have the Occupational Safety and Health Administration (OSHA) come get the list.

(3) Claimant did not report for work on August 7, 2014. The vice president asked the employer's president to telephone claimant, and the president did so. Claimant yelled at the president and stated that he was "never" coming back to work for the employer. Transcript at 24-25, 29-30, 54.

(4) On August 8, 2014, the president informed the vice president and the controller that claimant had quit work, and instructed the controller to process claimant's final paycheck. The controller did so.

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

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

At hearing, the employer's president testified that on August 7, 2014, claimant told him that he was "never" coming back to work for the employer. Transcript at 24-25, 29-30. The president's testimony was corroborated by evidence that on August 8, 2014, he told the vice president and the controller that claimant had quit work,¹ and the controller's August 10 and 29, 2014 letters to claimant stating it was her understanding that claimant had notified the president that he would not be returning to work, and that he was "never coming back" to work. Transcript at 54, 59. Although claimant testified that that he did not tell the president he was "quitting," he did not specifically deny telling him that he was never coming back to work for the employer.

The preponderance of evidence in the record therefore shows that on August 7, 2014, claimant told the employer's president that he was never coming back to work for the employer. In doing so, claimant demonstrated that he was unwilling to continue working for the employer for an additional period of time, and severed the employment relationship. Because claimant could have continued his relationship with the employer for an additional period time after August 7, 2014, the work separation is a quit. The fact that claimant apparently changed his mind about quitting work² does not change the nature of the work separation to a discharge. See accord *Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999) (claimant quit even though he changed his mind about quitting and the employer refused to allow him to rescind his resignation).

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.

¹ Transcript at 34-35, 39.

² Transcript at 18, 25-26, 29-30, 32, 60.

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.

Although claimant denied quitting work, we infer he did so because the employer responded to his request for an updated list of chemicals used by the employer by asking him to explain why he needed the list and instructing him to have a doctor fax or email a request for a list. However, it was not unreasonable for the employer to ask claimant why he needed the list or, given that the employer reasonably inferred claimant was at a doctor's office, to instruct him to have a doctor fax or email a request for a list. Claimant did not assert, and the record does not show, that the employer's response to his request for the list was such that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

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

DECISION: Hearing Decision 14-UI-27526 is affirmed.

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

DATE of Service: December 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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