

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1854

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113138). Claimant filed a timely request for hearing. On November 13, 2014, ALJ Vincent conducted a hearing, and on November 25, 2014 issued Hearing Decision 14-UI-29336, affirming the Department's decision. On December 2, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Postal Express, Inc. employed claimant as a courier from April 14, 2014 to June 27, 2014. Claimant had 40 years of experience in commercial driving.

(2) On June 2, 2014, the employer assigned claimant to drive a different vehicle than she had been driving. Whenever claimant applied the brakes, the vehicle would "bounce." Exhibit 1. She also noticed that the "check engine" light was on. Claimant felt that the brakes could fail at any time. Claimant reported the brake problem to the employer's owner. The owner said, "Goody," which sounded to claimant like a sarcastic and indifferent response. *Id.* The employer did not make any repairs to the vehicle based on claimant's report to the owner.

(3) Thereafter, claimant complained to three dispatchers, including the owner's son, that the vehicle she was assigned to drive had faulty brakes and was unsafe to drive. Each told claimant that the employer would not repair the brakes, and that if claimant was dissatisfied with the vehicle she was assigned to drive, she could leave. Claimant also discussed the faulty brakes with coworkers. Claimant's coworkers told her that the employer would not repair the brakes until the vehicle had enough problems that it broke down, and then the employer would repair all of the problems at the same time.

(4) Each day claimant drove her assigned vehicle, she prepared a vehicle inspection report on which she indicated that the brakes were faulty and the vehicle was not safe to drive. On the second day she was

assigned to the vehicle, she also reported that the check engine light was on. The vehicle was not repaired or taken out of service as a result of her reports. Claimant asked to drive another vehicle but the employer refused. Claimant repeatedly threatened to refuse to drive the vehicle unless it was repaired. She was told by the three dispatchers that she either had to drive the vehicle or leave.

(5) Claimant was certain the brakes in the assigned vehicle were faulty, the vehicle was unsafe to drive, and the longer she drove the vehicle in that condition the more likely the brakes would fail and cause an accident or injury. Claimant was concerned about her safety, and also that she would be liable if she knowingly operated an unsafe vehicle that wrecked or caused injury to others. Claimant had complained to the owner, his son, the other dispatchers, and was convinced that "everyone knew" she was worried about the safety of her assigned vehicle but the employer had not, and would not, repair it.

(6) On June 27, 2014, claimant quit work rather than continue to operate an unsafe vehicle that needed repair. On June 30, 2014, another employee reported to the employer on his daily vehicle inspection report that the check engine light was on. On July 29, 2014, the employer had the brakes serviced. The invoice for that service included charges for a set of brake pads, rotors, and a "basic brake job."¹

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant quit work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

Claimant's concerns about the mechanical soundness and safety of the assigned vehicle constituted a grave situation. Applying the brakes caused the vehicle to bounce, and made claimant, an experienced driver, feel certain the brakes were failing. There is objective evidence that the brakes on claimant's assigned vehicle were in disrepair, because approximately a month after claimant left work, the employer had the brakes serviced, and paid for brake pads and a rotor in addition to regular brake service. There is also evidence that the vehicle was in need of other maintenance or service, as the "check engine" light was on beginning June 3rd, and, reportedly, was still on June 30th, after claimant left work.

In Hearing Decision 14-UI-29336, however, the ALJ concluded that claimant quit work without good cause, reasoning that while claimant's concerns about her assigned vehicle were "understandable," none

¹ The ALJ marked the employer's documents as Exhibit 2, but excluded them from evidence because the employer failed to appear at the hearing. Exhibit 2 is necessary to complete the record, and, therefore, is admitted into evidence. OAR 471-041-0090(2) (October 29, 2006). Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the evidence will remain in the record.

would prompt a reasonable and prudent person to quit work "without attempting to redress them." Hearing Decision 14-UI-29336 at 3. He wrote, "claimant could reasonably have discussed all of these matters with management and the business' owner and sought a solution before quitting. At a minimum, claimant should have made attempts to bring her concerns to the attention of a supervisor, manager or owner before quitting." *Id.*

The record shows that claimant did seek those resolutions prior to quitting work, making some sort of attempt to do so nearly every day between the first day she drove the vehicle on June 2nd and the day she quit work on June 27th. Claimant understood based on her months of employment that, other than the owner, the dispatchers, including the owner's son, ran the business. Prior to quitting work, she complained to all of them but was met with sarcasm, indifference, and refusals to repair the vehicle or assign her to a different one, and was told when she asked to drive a different vehicle or tried to refuse to drive the assigned vehicle that if she did not want to drive the assigned vehicle or refused, she could leave her job. Claimant continued to report the faulty brakes and other problems on a near-daily basis, but her vehicle still was not repaired. Claimant reasonably concluded after more than three weeks of near-daily complaints through the written reports and complaints to the owner and individuals who ran the business that the employer was not going to repair her vehicle.

Thus, on this record, claimant had two options at the time she left work: continue to drive a vehicle she knew to be unsafe, or leave work. Under the circumstances, claimant's decision to quit work was consistent with that of a reasonable and prudent person of normal sensitivity, exercising ordinary common sense. Claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 14-UI-29336 is set aside, as outlined above.

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

DATE of Service: January 13, 2015

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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