

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1944

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 74730). Claimant filed a timely request for hearing. On December 10, 2014, ALJ Murdock conducted a hearing at which the employer failed to appear, and on December 11, 2014 issued Hearing Decision 14-UI-30261, affirming the Department's decision. On December 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Power Auto Inc. employed claimant as a motorcycle technician from February 1, 2012 to October 6, 2014.

(2) The employer agreed to pay claimant a "flat rate" based on the estimated time to complete a repair, as set forth in a rate book. Audio Record at 7:00. During the course of claimant's employment, however, the employer repeatedly "back flagged" him, refusing to pay claimant for repairs he completed. Audio Record at 7:30. Claimant complained to the employer's service writers, service manager, store manager, parts manager and owner, but the employer continued to back flag claimant. Claimant quit work, in part, for that reason.

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 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.

In Hearing Decision 14-UI-30261, the ALJ found as fact that the employer sometimes declined to pay claimant for work he performed because the employer chose to reimburse customers or reduce their costs for the services performed.¹ However, the ALJ concluded that claimant quit work without good cause, asserting that claimant failed to “establish that he was not being paid according to wage and hour laws, and had the reasonable alternative of affording the state the opportunity to investigate or determine whether the employer was complying with the laws in that regard.”² However, in declining to pay claimant for work he performed, the employer violated ORS 652.120(1), which provides that every employer shall pay all employees the wages due and owing to them. The employer’s violations were repeated, ongoing and likely to continue despite claimant’s complaints to the employer’s service writers, service manager, store manager, parts manager and owner, and regardless of whether claimant filed a complaint with the Oregon Bureau of Labor and Industries (BOLI). No reasonable and prudent person would continue to work an employer that repeatedly failed to pay him all the wages due and owing him while waiting an indefinite period of time for BOLI to investigate the situation. *Accord J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (claimant had good cause to leave work when a wage dispute was ongoing); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where wage dispute is not ongoing, and only the issue of back pay restitution continues to exist, claimant did not have good cause to quit work).

Claimant therefor quit work with good cause, and is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 14-UI-30261 is set aside, as outlined above.

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

DATE of Service: **February 10, 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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¹ Hearing Decision 14-UI-30261 at 3.

² *Id.* at 2.

