

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0006

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153806). Claimant filed a timely request for hearing. On December 29, 2014, ALJ Shoemake conducted a hearing, and on December 31, 2014 issued Hearing Decision 14-UI-31124, affirming the Department's decision. On January 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) G. H. McCullough, Inc. employed claimant from August 1, 1994 until October 28, 2014, last as a shop foreman.

(2) Sometime before October 28, 2014, one of the employer's four co-owners was informed that claimant had refused to repair a trailer on October 27, 2014, a day when the co-owner was not in the shop. The co-owner was upset because he thought that claimant's repair of the trailer should have been a priority because that trailer was needed to take certain equipment to a customer on the next day.

(3) On October 28, 2014, before the workday began, the co-owner went to an area of the shop where claimant and his crew dressed and prepared for work. The co-owner approached two of the crew members and instructed them to make the repairs to the trailer that he understood claimant had not made the day before. The co-owner then went up to claimant and asked claimant why he had refused to repair the trailer the day before. Both claimant and the co-owner were upset and the interaction between them became heated. Ultimately both men were standing face-to-face and speaking loudly. The co-owner did not verbally threaten claimant or make any physically threatening gestures toward him. Both men disengaged when claimant turned his back to the co-owner. Claimant then went to the preparation area of the shop and changed into his street clothes. Approximately fifteen minutes later, claimant walked up to the co-owner, gave him his work keys and his work cell phone and told him "good-bye." Audio at ~9:16, ~18:27, ~20:55. The co-owner told claimant "good-bye." Audio at ~18:40; ~20:55. Both

claimant and the co-owner understood that claimant was quitting work by his actions and statement. Audio at ~9:20; ~18:27.

(4) Before October 28, 2014, the co-owner had not at any time verbally or physically threatened claimant. They had never before had an interaction similar to that on October 28, 2014. Audio at ~9:52.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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.

Although claimant conceded that the co-owner did not make any verbal threats to him or any physically threatening gestures during their October 28, 2014 interaction, claimant contended that he felt "so threatened" by the co-owner's "body language" that he was compelled to quit. Audio at ~8:55, ~9:36. In contrast, the co-owner contended that it was claimant who initiated the agitated aspects of their interaction and he did not with words or gestures threaten claimant. Audio at ~15:40, ~16:57, ~17:35. There is no reason in the record to believe or disbelieve either party or to prefer the testimony of one over the other. When, as here, the evidence on a dispute issued is evenly balanced, the uncertainty in a voluntary leaving case must be resolved against claimant, because he was the party who carried the burden of persuasion. Accordingly, claimant did not show, more likely than not, that the owner acted toward him in a threatening manner. Even if we accept claimant's testimony that he felt threatened by the co-owner's "body language" on October 28, 2014, a reasonable and prudent person, exercising ordinary common sense, who had never before had a similar threatening encounter with the co-owner, would not have concluded that he faced a grave situation. A reasonable and prudent person would not have believed, based on such a vague and generalized subjective sense, that the co-owner was likely to actually attack him, otherwise harm him in the future or somehow subject him to a potentially grave circumstance. Audio at ~9:36. Absent something that objectively and concretely heightened the level of the perceived threat and its immediacy, a reasonable person would not have concluded that his only alternative to avoid harm was to leave work under the circumstances. Because claimant cited no reasonably aggravating circumstances, a reasonable and prudent person, on these facts, would likely have concluded that the co-owner's behavior on October 28, 2014 was aberrational, and would not have decided that he had no alternative other than to leave work immediately.

Claimant did not meet his burden to demonstrate that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-31124 is affirmed.

Susan Rossiter and J. S. Cromwell;

Tony Corcoran, not participating.

DATE of Service: February 24, 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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