

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0008

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143515). Claimant filed a timely request for hearing. On January 7, 2015, ALJ Triana conducted a hearing at which the employer did not appear, and on January 9, 2015 issued Hearing Decision 14-UI-31565, affirming the Department's decision. On January 12, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Columbia Forest Products, Plywood Division employed claimant from June 18, 2012 until November 7, 2014, last as a team leader in the shipping and receiving department.

(2) Claimant and his wife had five children, ages 10, 8, 6, 3 and 1. Claimant's wife was a homemaker who remained in the home to care for the children. The three older children attended school and the two younger did not. Claimant and his wife generally each had a vehicle to use. Although claimant's wife was able to drive the three older children to school, claimant preferred to do so.

(3) The employer initially hired claimant as an inside sales representative. In July 2013, claimant accepted a different position as a team leader in the shipping and receiving department of the employer's mill. To induce claimant to take the team leader position, the person who would become his supervisor agreed that he could leave work every weekday during his lunch hour to transport his three older children to school. Although claimant's employment contract stated that he was going to work 40 hours per week, claimant agreed when he became a team leader to work approximately 50 hours per week.

(4) In November 2013, a new person assumed the position of claimant's supervisor. Claimant perceived that the new supervisor did not like the arrangement under which he was permitted to leave the mill to drive his children to school during his lunch break. Claimant thought that the new supervisor believed that he was being more favorably treated than all the other team leaders, and resented the priority that

claimant placed on his family obligations. However, the new supervisor allowed claimant to continue taking his children to school during his lunch hour.

(5) In February 2014, the employer scheduled a weekend training seminar in Sunriver, Oregon and claimant's supervisor expected him to attend. Claimant told his supervisor that he had family plans for that weekend and asked if it was critical that he attend the training. The supervisor replied, "If you don't go, do you want to lose your job?" Audio at ~19:24. Claimant agreed to and did attend the training in Sunriver. After this exchange with his supervisor, claimant was convinced that the supervisor viewed his family and his family obligations with disfavor. However, the supervisor continued to allow claimant to drive his children to school.

(6) In June 2014, claimant and his supervisor met to discuss a particular swing shift employee. During that conversation, the issue of claimant's obligations to his family somehow became a topic. Sometime during their conversation, claimant's supervisor stated to him, "Your family is the monkey in the room." Audio at ~21:20. The supervisor's comment insulted claimant, and confirmed claimant's belief that the supervisor disliked his focus on his family life.

(7) In September 2014, the position that claimant had previously held as inside sales representative became open. Claimant applied for that position, thinking that it would allow him greater flexibility to be available to his family while still working for the employer and that he would be hired for that job based on his previous experience. Claimant was not hired for that position and was told that he was not because the employer had not been satisfied with his performance when he previously held it. Claimant thought that the employer was "really unprofessional" in the reasons that the employer gave for not hiring him for the sales position. Audio at ~36:24.

(8) On September 28, 2014, one of the two cars available to claimant and his wife broke down. When the car was being repaired, claimant and his wife decided that he would use the one car that remained available to them to commute to work and transport their children to school. In early October 2014, claimant spoke to his supervisor to tell him he might that he might need to leave work for brief periods to assist his family if "something came up" while one of their vehicles was being repaired. Audio at ~26:40. The supervisor told claimant that he expected claimant to work up to 60 hours per week and that if claimant had "another personal life incident" he was going to ask claimant to resign. Audio at ~11:44; ~12:52, ~23:43, ~24:15.

(9) On approximately October 21, 2014, claimant again met with his supervisor to continue their discussion about the supervisor's expectations. Claimant told his supervisor that he could not "commit" to working 60 hours per week when only one vehicle was available to him and his wife for family purposes, and that he might need to leave work for short periods during this time to assist his wife. Audio at ~12:00, ~12:58. Claimant also told his supervisor that he could not guarantee that he would not need "eventually" to leave the workplace during work hours to help with his children or that some "personal life incident" would not arise. Audio at ~13:22. The supervisor stated that, regardless of these issues, claimant needed to "be here [at the workplace] to make sure your department is running effectively." Audio at ~13:20. At that time, claimant concluded that his supervisor was not going to allow him to leave work if he needed to help his family, and claimant told his supervisor he was resigning. Thereafter, claimant and his supervisor agreed that November 7, 2014 was going to be his last day.

(10) On November 7, 2014, claimant voluntarily left work.

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.

While claimant spent a great deal of time testifying about his efforts to reach a compromise with the employer that would allow him to devote the time that he wanted to his family, the issue is not whether the employer accommodated claimant to the extent that he desired or was as sympathetic to his concerns as he was, but whether claimant demonstrated that the employer's failure to do either subjected him to objectively grave circumstances. Audio at ~14:26, ~15:17, ~16:55, ~18:22, ~21:57, ~23:08, ~34:33, ~39:08. Claimant presented no evidence that his supervisor had ever forbidden him to leave the workplace when his wife and children legitimately needed assistance at home that only he could provide. Nor did he present evidence that his supervisor actually intended not to allow him to leave work if there was a family emergency. Although claimant presented testimony that tended to show that his supervisor disliked his attentiveness to his family when it interfered with his activities in the workplace, and expressed irritation at his having "personal life incidents," claimant did not show, for example, that the supervisor had ever told him he was not allowed to continue taking his older children to school during work hours or that, if claimant was forbidden from doing so, it would subject his children to an objectively harmful situation or that he and his wife were unable reasonably to make alternative arrangements for the transportation of the children. Audio at ~29:36, ~30:35, 32:26. While claimant may have inferred from the supervisor's reference to "personal life incidents," that the supervisor intended to prohibit him from responding to an emergent family event, it is just as plausible that the supervisor's reference was meant only to convey his view that claimant's work performance was compromised by the amount work time and the focus that he devoted to his family life. Claimant also did not show that the supervisor's stated intention to ask him to resign if he sought to leave work to assist his wife and children another time was the equivalent of stating that he intended discharge him if another "family life incident" arose. Rather, on the facts that claimant provided about his conversations with his supervisor, the supervisor's comment is susceptible of being interpreted as principally an expression of the supervisor's irritation that, in the supervisor's opinion, claimant too often raised family issues as a justification for seeking to modify his work schedule from that of other team leaders and that, at some unstated and indefinite future time, claimant might need to choose between work life and his family life. In and of itself, the supervisor's comment that claimant might need to resign if he continued to have family issues, was not a grave reason to leave work.

Maintaining an appropriate work-life balance is often a challenge for employees and taking steps to accommodate employees' legitimate family obligations while continuing to ensure that they serve the

employer's interests is often also a challenge for supervisors. The standard for determining whether claimant had good cause to leave work on the facts of this case, however, is not whether claimant and his supervisor agreed with the manner in which claimant sought to achieve that work-life balance, but whether the behavior of the supervisor caused objectively grave circumstances for claimant or his family. On this record, claimant did not meet his burden to show that his supervisor's behavior, as he described it, was an objectively grave reason for him to leave work when he did, or gave rise to grave and cognizable harms either to him or his family members. A reasonable and prudent team leader, exercising ordinary common sense, would not have concluded, based on the facts that claimant presented, that he had to leave work when claimant did.

Claimant did not show that objectively grave circumstances required him to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-31565 is affirmed.

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

DATE of Service: February 26, 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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