

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0124

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100151). Claimant filed a timely request for hearing. On January 26, 2015, ALJ Kirkwood conducted a hearing and issued Hearing Decision 15-UI-32320, affirming the Department's decision. On February 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument to EAB but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Swift Transportation Co. employed claimant from May 2, 2013 to November 14, 2014 as a truck driver.

(2) On November 13 and 14, 2014 there was an ice storm warning for the Portland area and Interstate 84 (I-84). Claimant worked from the employer's terminal in Troutdale, Oregon. The employer had offered claimant a truck load that it expected claimant to pick up on November 14 seven miles from the employer's terminal, carry east on I-84 to Idaho, and then deliver in Utah.

(3) Claimant had not driven his truck in icy conditions before. On November 13 and the morning of November 14, he monitored the weather and determined it was not safe for him to drive his truck to pick up the load in Portland or travel on I-84 due to icy conditions in Portland and on I-84. Claimant asked the employer's dispatch and planners to remove the load from his itinerary for November 14 because he believed it was unsafe. The employer refused to do so because it determined that the weather conditions were manageable in Portland, and that it was safe for claimant to pick up the load and bring it at least as far as the employer's terminal in Troutdale. The employer permitted drivers to park loaded trucks at the employer's terminal while waiting for suitable driving conditions on I-84.

(4) Claimant understood he could refuse to take the load, but would probably receive a “service failure,” indicating he had not completed a delivery as dispatched. Claimant considered a service failure to be the “first step” in the disciplinary process, but understood it would not result in immediate discharge. Audio Record at 43:48 to 44:34.

(5) On November 14, 2014, claimant told his manager that he refused to accept the load, and if the employer did not remove the load from his itinerary, he would quit. The manager told claimant the employer would not remove the load, and claimant quit.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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.

Claimant quit work because the employer refused to cancel a truck load that required him to drive in Portland and on I-84, when claimant determined driving conditions in those areas were unsafe. Claimant asked the employer repeatedly to remove the load, but the employer determined driving conditions were manageable in Portland, making it safe for claimant to pick up the load in Portland. Claimant testified at hearing that his options were to take the load in unsafe conditions, receive a “service failure,” or quit. Audio Record at 43:47 to 43:55. The record shows that refusing to accept the load, and probably receiving a service failure, was a reasonable alternative to quitting. Claimant did not show that he feared losing his job or other serious adverse consequences if he refused to accept the load. Moreover, claimant’s manager testified that, had claimant merely refused to take the load, it would have resulted in a counselling, but not a serious reprimand or discharge. Audio Record at 32:42 to 34:06.

Claimant failed to show that the employer’s refusal to remove the load from his itinerary on November 14, 2014 was a situation of such gravity that a similarly situated reasonable and prudent person would have had no reasonable alternative to leaving work. Thus, claimant failed to show good cause for leaving work. He is disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Hearing Decision 15-UI-32320 is affirmed.

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

DATE of Service: March 19, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.