

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0144

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 102407). Claimant filed a timely request for hearing. On January 30, 2015, ALJ R. Frank conducted a hearing and issued Hearing Decision 15-UI-32711, affirming the Department's decision. On February 13, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

FINDINGS OF FACT: (1) Armstrong World Industries employed claimant as a paint module technician from September 17, 2001 to November 12, 2014.

(2) Claimant and his coworkers worked 12 to 13 hour shifts. During the last two or three years of claimant's employment, the employer often did not allow claimant and his coworkers to take rest and meal breaks. Claimant complained to supervisors and manager several times, but the situation did not improve. One of claimant's coworkers complained using the employer's employee assistance program (EAP) hotline, but the situation did not improve. Other coworkers complained to the employer's human resources department, but the situation did not improve.

(3) Claimant quit work because of the employer often did not allow him to take rest and meal breaks.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause to quit working for the employer.

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 often did not allow him rest and meal breaks during his 12 to 13 hour shifts. The employer’s conduct violated OAR 839-020-0050 (January 1, 2014), which required the employer allow claimant one 30 minute meal break and three 10 minute rest breaks per shift. In Hearing Decision 15-UI-32711, the ALJ concluded that claimant quit work without good cause because he could have referred his concerns to the employer’s human resources department, insisted on taking all of his breaks, or contacted the Oregon Bureau of Labor and Industries (BOLI). However, the ALJ’s analysis overlooks the fact that claimant had complained to supervisors and manager several times, and that other employees had complained to the human resources department and through the employer’s EAP hotline, but the break situation did not improve. More likely than not, it would have been futile for claimant to complain to the human resources department, or simply insist on taking all of his breaks. Nor would a reasonable and prudent continue to work for an employer that continued to violate Oregon wage and hour law, despite repeated complaints from multiple employees, while a BOLI complaint was pending. *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); *cf. 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 quit work with good cause. He is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-32711 is set aside, as outlined above.

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

DATE of Service: March 27, 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.