

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0190**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103358). Claimant filed a timely request for hearing. On February 12, 2015, ALJ Seideman conducted a hearing and issued Hearing Decision 15-UI-33456, affirming the Department's decision. On February 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he offered new information about the reasons that he left work. Although claimant had ample opportunity to provide this information at hearing in response to questions from the ALJ and the employer's representative, he did not do so. Audio at ~6:35, ~6:47, ~13:25, ~14:00. Because claimant's argument contained information that was not part of the hearing record, and he failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing, EAB did not consider it. *See* OAR 471-041-0090(2) (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2)

**FINDINGS OF FACT:** (1) La Barre Machine Works, Inc. employed claimant in its saw department from September 23, 2013 until August 15, 2014.

(2) When the employer hired claimant, claimant's supervisor told him that he would receive a performance evaluation in six months and he could receive a raise at that time. By the end of March 2014, claimant had not received the performance evaluation and he asked his supervisor when his evaluation would occur. Claimant's supervisor told claimant that he was not going to perform the evaluation and it would be done by someone in the employer's organization who was superior to the supervisor. The supervisor did not give claimant a date or an approximate date when that evaluation would occur.

(3) During his employment, claimant perceived what he thought to be safety issues in the workplace. One issue was that a crane was missing a safety pin that was intended to secure the lifting hook on the

crane arm. Claimant spoke once to the employer's chief executive officer (CEO) about the missing safety pin as the CEO walked by him. The CEO told claimant to speak with his supervisor about the pin. Claimant then raised the issue of the pin with his supervisor and his supervisor's manager. The supervisor devised a "temporary solution" for the problem which involved "sticking a pin in the hook." Audio at ~14:18. This remedy did not work because the pin that was inserted broke off. The second safety issue that claimant perceived was that one of the employer's cranes did not clear the roof of the workplace when it was used to lift materials and some of those materials would fall from the crane. Sometime during claimant's employment, the employer replaced that crane.

(4) Before August 15, 2014, claimant did not speak with any employer representatives other than the one time he spoke to his immediate supervisor about his desire to have a performance evaluation. Claimant did not speak to any representatives of the employer about what he thought were safety issues other than the conversations referred to above. The CEO was not aware that claimant's supervisor had not corrected the problem with the safety pin that claimant had identified. The safety pins in the employer's cranes were inspected every year as required by Oregon workplace safety regulations.

(5) By August 15, 2014, claimant still had not received his performance evaluation. On that day, claimant asked his supervisor for the second time about the evaluation. The supervisor told claimant that he was "too busy" to give him his performance evaluation at that time. Audio at ~12:56. Claimant then quit work and did not return to the workplace.

**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.

Claimant testified that he decided to leave work because his supervisor did not give him the performance evaluation he was promised and was "extremely rude" to him by stating on August 15, 2014 that he was "too busy" to give the evaluation at that time. Audio at ~6:24. Claimant also stated that he decided to quit work due to safety issues that had been "completely ignored." Audio at ~6:24. With respect to the missed performance evaluation, the only harm that claimant identified was that he might have received a raise after the evaluation. Audio at ~9:46. Claimant did not dispute the testimony of the employer's CEO that a raise was not guaranteed to claimant even if the performance evaluation had occurred. Audio at ~16:41. That claimant missed the mere possibility of receiving a raise does not give rise to the type of objectively grave circumstances needed to demonstrate good cause for leaving work. Moreover, although claimant was apparently acquainted with the employer's CEO and stated that he could have raised the issue of his missed performance evaluation with him, claimant did not do so. Audio at ~8:18. The CEO candidly testified at hearing that claimant was entitled to a review every six months, and from the tenor of his testimony, it appears likely that he would have been receptive to arranging a

performance review for claimant if claimant had approached him about it. On these facts, a reasonable and prudent employee exercising ordinary common sense would not have quit work because his performance evaluation was five months overdue and his supervisor was not able to arrange it immediately when he requested it a second time.

With respect to the workplace safety issues that claimant identified, the matter of the crane that did not clear the workplace roof had been resolved when the employer replaced it sometime before claimant quit. Because that crane no longer posed an alleged safety issue at the time that claimant decided to leave work, it could not have been a proximate cause of that decision. In connection with the crane that was missing a safety pin, claimant did not present any evidence that he had informed his supervisor or the employer's CEO that the supervisor's "temporary solution" had not been effective to remedy the alleged safety problem. Audio at ~14:16. A reasonable and prudent employee exercising ordinary common sense, who wanted to remain employed, would not have quit work over a continuing problem with a crane safety pin until he informed either his supervisor or the CEO that the supervisor's first attempt to remedy the problem had not been successful, further efforts were needed and no such remedial efforts were forthcoming within a reasonable period of time.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-33456 is affirmed.

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

**DATE of Service:** April 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 Court of Appeals website at [courts.oregon.gov](http://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.

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