

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0232**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115445). Claimant filed a timely request for hearing. On February 10, 2015, ALJ Wyatt conducted a hearing, and on February 13, 2015 issued Hearing Decision 15-UI-33556, reversing the Department's decision and concluding that a disqualifying work separation did not occur. On February 27, 2015, the Department filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) William Aircraft Painting & Auto Body employed claimant to perform auto body work from November 24, 2014 through December 16, 2014.

(2) On December 16, 2014, one of the employer's co-owners approached claimant in the back of the shop as claimant was readying to paint a piece of equipment. As he climbed up a ladder in the shop to perform some work, the co-owner explained to claimant how he wanted the painting done. Claimant perceived that the co-owner was in a "bad mood" when speaking to him. Audio at ~16:38. Claimant commented to the co-owner that the co-owner's painting procedures were "different from what I was taught." Audio at ~ 16:26. The co-owner thought that claimant was arguing with him about how to appropriately paint the equipment, and become irritated. Audio at ~10:23, ~17:30. The co-owner stated to claimant, "I'll effing do it [paint the equipment] myself," and said to claimant, "Hit the road." Audio at ~16:46, ~17:57. . Claimant concluded that the co-owner was discharging him. Claimant did not ask the co-owner what his comment meant. Saying nothing, claimant left the workplace and did not return.

Claimant did not then or later ask the co-owner if he had correctly inferred that the co-owner's comment was intended to communicate to claimant that the co-owner had terminated claimant's employment.

(3) The employer had continuing work available for claimant when he left the workplace.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

In Hearing Decision 15-UI-33556, the ALJ found that the testimony of the employer's co-owner and claimant was in irreconcilable conflict on the issue of whether claimant voluntarily left work or whether the employer discharged him. The ALJ determined that there was no principled means to resolve this uncertainty in the evidence, and concluded that "the preponderance of the evidence does not establish that a disqualifying work separation occurred" since he had not been able to determine whether a discharge or a voluntary leaving caused the work separation. Hearing Decision 15-UI-33556 at 2. We disagree.

While the ALJ was correct that parties disagreed on how they characterized the work separation, their testimony agreed on certain key facts about the December 16, 2014 conversation that caused the work separation. Audio at ~10:12, ~16:15, ~16:29. To the extent that the parties disagreed about what was said during that conversation, it is appropriate to accept claimant's account since it is claimant's disqualification from benefits that is at issue in the work separation. Significantly, neither party contended that the co-owner told claimant that he was discharged or "fired" or used any other words that are customary associated with an intention to discharge or to involuntarily terminate the employment relationship. Audio at ~17:30, ~19:00. Although he did not know the reason for the co-owner's bad temper, claimant repeated several times in his testimony that the co-owner was irritated and in a "bad mood" when he spoke to him about the way in which to paint the equipment. Audio at ~16:38, ~17:30, ~19:00. Assuming that the co-owner told claimant to "hit the road" after claimant made a statement to him that could reasonably be construed as expressing doubt or disapproval about the painting method the co-owner wanted claimant to use, the co-owner's single comment was ambiguous, and cannot be reasonably construed in only one way as evidencing an intention to discharge claimant. Viewed in the context that claimant described, the comment could also reasonably be interpreted as an expression of the co-owner's irritation at claimant for claimant's failing to agree with the co-owner's painting procedures, an instruction to claimant to stop his efforts to complete the painting job he was about to begin, or expressing a sarcastic form of disapproval about them, as well as the co-owner's distaste at the prospect of performing himself the painting work that he had assigned to claimant. Given claimant's reasonable awareness of these circumstances, including particularly the co-owner's pre-existing foul mood and the fact that the co-owner did not unambiguously evidence an intention to discharge claimant, it was not reasonable for claimant to conclude that the owner had discharged him based only on a single comment and without further inquiry into the meaning of what the co-owner meant when he said "hit the road." Although claimant might have misunderstood the co-owner's intentions, by leaving the workplace when he did, abruptly and without saying anything to the co-owner, while a continuing

employment relationship was possible, claimant manifested the first unambiguous expression of either party's intention to sever the work relationship and it was reasonable for the co-owner to construe it as such. Claimant's work separation was a voluntary leaving on December 16, 2014, when he left the workplace and did not attempt after he did so to communicate his intentions to the co-owner.

Because the ALJ was incorrect in concluding that there was insufficient evidence to determine the correct characterization of the work separation, he did not reach the issue of whether the circumstances of the work separation did or did not disqualify claimant from benefits. 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). 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.

It appears that claimant left work when he did because he mistakenly thought that the co-owner had discharged him. EAB has consistently held that a claimant's mistaken belief about an employer's intention to sever the work relationship based on ambiguous statements is not a situation of such objective gravity that a reasonable and prudent person, exercising ordinary common sense, would have left work.<sup>1</sup> Rather, when an employer's communications are ambiguous under the circumstances, a reasonable and prudent person would have sought clarification from the employer and determined that a discharge was intended before quitting. Because the statement on which claimant relied as his reason for leaving work was ambiguous, and claimant did not seek clarification from the co-owner that a discharge was intended, claimant left work without good cause.

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

**DECISION:** Hearing Decision 15-UI-33556 is set aside, as outlined above.

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<sup>1</sup> See *Sonya G. Wasserman* (Employment Appeals Board, 2014-EAB-1670, December 16, 2014) (claimant who mistakenly assumed that owner intended to discharge her when owner asked claimant to turn in her keys and stated "it is what it is" did not have good cause to leave work because owner's statements were ambiguous and claimant did not ask for clarification); *Gary L. Reisen* (Employment Appeals Board, 11-AB-2392, October 10, 2011) (claimant who assumed, without confirming, that he was fired when, after an argument, manager told him to "get out" did not have good cause to leave work because manager's statement, under the circumstances, was ambiguous); *Joshua A. Smith* (Employment Appeals Board, 11-AB-0702, March 15, 2011) (claimant who assumed, without seeking clarification, that he was fired when told the "leave the kitchen" did not have good cause to leave work because statement was ambiguous); *Samantha M. Knauss* (Employment Appeals Board, 10-AB-3931, January 14, 2011) (claimant who assumed, without seeking clarification, that she was discharged when, after calling in sick, he manager told her "no just don't come in" did not have good cause to leave work because statement was ambiguous); *Cliff D. Hoover* (Employment Appeals Board, 10-AB-1790, July 22, 2010) (claimant who assumed, without confirming, that she was discharged when owner said "it's not working out" and "we should probably go our separate ways" quit work without good cause because owner's statements were ambiguous); *Chantel M. Dominguez* (Employment Appeals Board, 09-AB-2465, August 18, 2009) (claimant who assumed, without clarifying, that she was discharged based on employer's statement to her to "do what you gotta do" left work without good cause because employer's intentions were ambiguous).

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

**DATE of Service: April 16, 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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