

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0393

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90337). Claimant filed a timely request for hearing. On April 2, 2015, ALJ S. Lee conducted a hearing, and on April 3, 2015 issued Hearing Decision 15-UI-36269, affirming the Department's decision. On April 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Lester Dump Trucks, LLC employed claimant as a driver from February 9, 2011 until January 31, 2015. Claimant hauled loads of goods for the employer in Oregon, Washington and California.

(2) In 2014, the employer's owner died and the owner's widow assumed responsibility for the employer's operations. The employer had four employees, including claimant. In 2014, the employer purchased new trucks and was making payments on the trucks in 2015. As a result, the employer was very concerned that its drivers maximize the revenues generated for the employer, including by not missing to pick up or deliver scheduled loads, and by avoiding the delivery of a load without picking up a return load. These occurrences reduced the employer's net profits, which might impair its ability to make the payments due on the new trucks. On some occasions in 2014 and 2015, claimant's actions in hauling loads resulted in the employer losing money or not covering the cost of operating his truck.

(3) On January 26, 2015 at around 4:30 p.m., claimant was near Portland, Oregon and hauling a load north to a destination north of Seattle, Washington. At that time, claimant received a call from a hospital in Klamath Falls, Oregon, where he lived. The hospital reported to claimant that his wife had been hospitalized because she had blood clots in her lungs. Claimant immediately called the employer's

surviving owner, told her that his wife had been hospitalized with blood clots in her lungs and that he needed to return home immediately to be with her. Audio at ~9:10, ~23:09. The owner told claimant told claimant that she would "just have get somebody who wants to drive the truck," and abruptly hung the phone up. Audio at ~9:50, ~28:22. The owner did not ask claimant how his wife was doing when she spoke to him. Audio at ~9:50, ~26:38.

(4) After speaking with the owner on January 26, 2015, claimant immediately called the dispatcher responsible for assigning the pick-ups and deliveries to the employer's drivers. Claimant told the dispatcher about his wife's hospitalization and his need to return immediately to Klamath Falls. The dispatcher told claimant "we'll see what we can do" and that he would "do something" to arrange for him, after he dropped off the load near Seattle, to pick up a load to haul south toward Klamath Falls. Audio at ~13:38. Claimant continued driving north. The dispatcher called claimant and told him that he had arranged for him to pick up a load of apples in Yakima, Washington that was to be hauled to southerly location. Claimant refused to pick up the apples because Yakima was "too far away" for him to make a speedy return to Klamath Falls. Audio at ~13:40. The son of the surviving owner then called claimant and told him "we've got to keep [your] truck going." Audio at ~14:10. Neither the dispatcher nor the son of the owner asked claimant how his wife was doing. Late that night or early in the morning on January 27, 2014, the dispatcher called claimant and told him that he had arranged for claimant to pick up a load in Eugene, Oregon that would allow him to drive to Klamath Falls where his wife was hospitalized.

(5) On January 27, 2015, claimant picked up the load in Eugene and went to Klamath Falls. Claimant was able to visit his wife in the hospital. After being visiting his wife for approximately an hour to an hour and one-half, the dispatcher called claimant and told him that the surviving owner was angry at him and would likely fire him if he did not drive the truck to California. Claimant became very upset, but took the truck to California. Claimant did not call the owner to tell what the dispatcher had relayed to him, or that that he was unwilling to drive the truck to California because he was too angry to speak with the owner. Audio at ~17:17. On January 27 or 28, 2015, the dispatcher asked claimant about his wife's condition. This was the first inquiry from anyone associated with the employer about the well-being of claimant's wife.

(6) On January 31, 2015, claimant returned to Klamath Falls from California. When he returned, claimant was still very upset about the manner in which the employer had dealt with his requests to travel to Klamath Falls immediately to stay with his wife and also about the employer's failure to express any concern about his wife's welfare. Claimant decided to quit work. When claimant returned to the employer's yard, he left a voicemail message for the owner, told her he was quitting work, and that he was leaving the keys to the truck and various cards and permits in the employer's drop box. Claimant voluntarily left work on January 31, 2015.

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

Although claimant contended in his written argument that the employer discharged him, based on what the dispatcher told him on January 27, 2015 about what the owner's intentions were if he did not take the truck to California, he did in fact drive the truck to California. Claimant's Written Argument at 1. Claimant did not present any evidence that the owner or any representative of the employer expressed a present intention to discharge him. Claimant also agreed at hearing that the owner never told him to

leave the workplace and that he had quit work. Audio at ~8:36. On these facts, because there was no evidence in the record that the employer was at any time unwilling to continue the employment relationship, claimant's work separation was a voluntary leaving on January 31, 2014. See OAR 471-030-0038(2)(a)(b) (August 3, 2011).

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 did not decide to leave work when he did because the employer refused to allow him to go to his ill wife. He quit when he did because of his own emotional response to what he perceived as the employer's indifference to his wife's welfare over the past week. It was apparent at hearing that claimant was still indignant about the employer's reaction to his wife's health condition, and the failure of its representative to express concern over her well-being. However, claimant did not show that the magnitude of those after-the-fact emotions was a grave reason to leave work. Although the employer was not sympathetic to claimant's concerns over his wife's well-being and not apparently accommodating to his desire to be with her when she was hospitalized, claimant did not contend that the employer was customarily indifferent or callous to employees' family needs. While claimant described his wife's condition at hearing and to the employer's representatives as involving "blood clots in her lungs," he did not mention the relative severity of this condition or that he ever told the employer his wife's condition was grave. It can reasonably be inferred that the condition of claimant's wife was not such that her life was in jeopardy since, if it had been, claimant most likely would have returned to Klamath Falls even if the employer refused to give him permission to do so. Even so, although claimant might have been outraged by the response of the employer's representatives to his wife's circumstances, he did not show that his outrage, alone, constituted a grave situation. Viewing the record as a whole, a reasonable and prudent person, exercising ordinary common sense would not have left work because his employer was not as sympathetic to his wife's health as he thought appropriate or because he was otherwise angry at the employer's reactions to his wife's health condition.

Claimant did not show that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-36269 is affirmed.

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

DATE of Service: May 28, 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.

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