

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0444**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85239). Claimant filed a timely request for hearing. On April 14, 2015, ALJ Seideman conducted a hearing and issued Hearing Decision 15-UI-36844, affirming the Department's decision. On April 21, 2014, 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) RHR Heating Co. employed claimant from December 23, 2014 to January 27, 2015.

(2) Claimant told the employer at hire that he would have a valid driver's license in approximately one month. The employer hired claimant at a reduced rate because of his inability to drive. The employer provided claimant with service technician work when someone was available to drive claimant to and from job sites, and installer helper work when no drivers were available to help claimant.

(3) On January 26, 2015, the owner, Rick, sent claimant home from a job site in Myrtle Point, Oregon because he did not need claimant to work at that job site.

(4) On January 27, 2015, Rick told claimant that he could no longer use claimant as a service technician unless claimant could drive, but that claimant could continue working as an installer helper. Claimant understood that Rick could not use him at the Myrtle Point job site, and mistakenly believed the employer would not allow him to continue working since he could not drive, but still understood that he was expected to help Jim, a coworker, at a job site that afternoon. Rick's son at some point told claimant that a coworker, Shawn, who was traveling to the employer's Myrtle Point job site, could provide claimant with a ride home. After speaking with Rick, but before leaving with Shawn, Heidi, the employer's coowner, office manager and dispatcher, told claimant to go with Shawn to the Myrtle Point

job site to work. Claimant did not tell Heidi that her instruction contradicted Rick's, or ask Heidi to clarify what he was supposed to do that morning. Claimant did not tell Rick about Heidi's instructions or clarify whether he was going to be allowed to continue working.

(5) Claimant got a ride with Shawn as planned. Instead of traveling with Shawn to the Myrtle Point job site as Heidi had instructed, claimant asked Shawn to drop claimant off at claimant's home. Later that day, claimant contacted the employer via text message, stating that he would collect his paycheck in person on February 10, 2015. Claimant did not work for the employer after January 27, 2015.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant voluntarily left work without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

At the time of the work separation, Heidi had instructed claimant to report to work at the Myrtle Point job site and claimant instead went home. Continuing work had been available to claimant at the time he set the text message regarding his final paycheck, and claimant did not return to work thereafter or contact the employer about continuing work. The work separation was, therefore, a voluntary leaving.

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.

Claimant apparently left work under the mistaken belief that the employer no longer had work available to him. Claimant's confusion was understandable, given Rick's statements to claimant that he could not be given service technician work unless he had a driver's license, and given the contradictory information he had been given from Rick and Heidi about the availability of work at the Myrtle Point job site. However, because claimant also thought continuing work with Jim was available the same afternoon, it is not clear why he believed he had been discharged by Rick that morning. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, who is given contradictory information about the availability of continued work, as claimant was, would seek clarification about his employment status before leaving work. Claimant had the reasonable alternatives of telling Heidi that her instruction to go to the Myrtle Point job site contradicted what Rick had told him that morning, traveling with Shawn to the Myrtle Point job site as Heidi instructed and telling Rick that Heidi had sent him to work, or, because claimant believed Rick to be the owner of the company with sole authority over claimant's employment status, asking Rick if Rick had discharged him on January 27<sup>th</sup>, or if Rick would allow claimant to continue working for the employer.

Claimant failed to establish that he left work because of a situation of such gravity that a reasonable and prudent person would have no reasonable alternative but to quit. Claimant therefore left work without good cause, and is disqualified from receiving benefits because of his work separation.

**DECISION:** Hearing Decision 15-UI-36844 is affirmed.

J. S. Cromwell and D. H. Hettle, *pro tempore*;  
Susan Rossiter, not participating.

**DATE of Service:** June 12, 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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