

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0479

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112658). Claimant filed a timely request for hearing. On April 9, 2015, ALJ M. Davis conducted a hearing, and on April 16, 2015 issued Hearing Decision 15-UI-36992, affirming the Department's decision. On April 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information about his living expenses that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) The Home Depot employed claimant from September 27, 2014 to December 9, 2014 as a pack down associate.

(2) On November 21, 2014, the employer reduced claimant's hours from 25 to 20 hours per week. Claimant worked five days per week and earned \$9.67 per hour. Claimant spent \$96 per week for fuel to commute to work, and \$9 per week for vehicle insurance and maintenance. Claimant asked the employer if he could work longer shifts to reduce the number of days he had to commute. The employer refused claimant's request.

(3) Claimant experienced neck pain he attributed to moving heavy items at work. Claimant could not afford to pay for medical treatment for his neck. Claimant did not report his neck pain to the employer.

(4) On December 9, 2014, claimant quit work due to a reduction in hours, and neck pain from work.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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). An individual who leaves work due to a reduction in hours has left without good cause unless continuing to work substantially interferes with his return to full time work or the cost of working exceeds his remuneration. OAR 471-030-0038(5)(e). The good cause 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.

To the extent claimant left work due to the reduction in his hours, he did not have good cause to quit. Claimant did not establish that his cost of working, such as fuel and vehicle expenses, exceeded his remuneration. Nor did claimant assert or show that working reduced hours would have substantially interfered with his ability to seek or obtain full time work.

Claimant left work, in part, because he had neck pain he attributed to his working conditions. Claimant did not show he had good cause for quitting work due to the neck pain, because he did not show it would have been futile to tell the employer about his neck pain, file a worker’s compensation claim to obtain, or to otherwise request, medical treatment, time off work, or light duty work. Claimant did not show he had to quit his job to avoid the neck pain.

Claimant averred that he did not report his neck pain to the employer because he feared he would be discharged based on having heard a manager comment that another employee lost a finger from a work-related accident. Audio Record at 16:53-18:02. However, claimant did not specify what, if any, situations he experienced or observed where the employer had denied time off work to an injured employee, nor did he establish a factual basis for believing the employer would do so. The preponderance of the evidence fails to show that claimant had a factual basis for believing that the employer would discharge or retaliate against him had he filed a worker’s compensation claim or otherwise reported his pain to the employer and sought accommodation.

In sum, claimant failed to prove by a preponderance of the evidence that he had good cause for quitting work. He is, therefore, disqualified from receiving unemployment insurance benefits until such time as he requalifies by earning four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-36992 is affirmed.

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

DATE of Service: June 18, 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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