

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0576

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114647). Claimant filed a timely request for hearing. On May 5, 2015, ALJ Triana conducted a hearing, and on May 6, 2015 issued Hearing Decision 15-UI-37986, affirming the Department's decision. On May 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Wenoregon LLC employed claimant from August 12, 2014 to February 19, 2015 as a crew member.

(2) Claimant is a recovering drug addict who no longer engages in the illegal use of drugs.

(3) Three assistant managers and a crew member regularly engaged in the use of illegal drugs in the workplace while claimant was working. Claimant did not report her coworkers' drug use to the employer.

(4) Claimant had a congenial working relationship with her supervisor, the general manager, who did not use illegal drugs. Claimant sometimes discussed personal matters with the general manager when she worked with her. Claimant also sometimes contacted the general manager's supervisor about attendance matters.

(5) Claimant knew the employer had a policy prohibiting the use of illegal drugs in the workplace and that it had recently discharged a manager after investigating an employee's report that the manager had left marijuana outside the workplace for another employee. Claimant knew the employer had an

employee complaint hotline that accepted anonymous complaints. The hotline number was posted in the employee break room.

(6) On February 19, 2015, claimant quit work to avoid being exposed to illegal drug use.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting work when she 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 quit work. OAR 471-030-0038(4). Claimant is a recovering drug addict not currently engaged in the illegal use of drugs. Her condition constituted a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). Therefore, we analyzed claimant’s decision to leave work using the standard of a reasonable and prudent person with the characteristics and qualities of an individual with such an impairment. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person with the characteristics and qualities of a person with her condition would have continued to work for the employer for an additional period of time.

Claimant quit work because she did not want to be exposed to illegal drug use. However, claimant did not report her coworkers’ drug use to the employer, despite knowing the employer had a drug and alcohol policy prohibiting the use of illegal drugs in the workplace, that it had recently discharged an employee in the past for drug activity at work, and having access to an anonymous employee complaint line and a direct supervisor with whom she had discussed personal matters in the past. Claimant testified at hearing that she did not report the drug use because she did not want to “get anybody in trouble,” and was concerned the employees would retaliate against her. Audio Record at 14:02 to 15:36. However, claimant provided no evidence to show the employer would permit retaliation to occur, and the employer’s general manager testified that the employee who had recently reported a manager’s drug activity suffered no retaliation from coworkers. Audio Record at 31:46 to 32:06. A reasonable and prudent person with the qualities and characteristics of an individual who is a recovering addict, exercising ordinary common sense, would not quit work because of her coworkers’ drug use at work without first giving the employer some opportunity to address and alleviate the problem. Nor did claimant prove by a preponderance of the evidence that doing so would have been a futile or unreasonable exercise.

Claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-37986 is affirmed.

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

DATE of Service: July 6, 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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