

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0591

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 71811). The employer filed a timely request for hearing. On May 1, 2015, ALJ Triana conducted a hearing and issued Hearing Decision 15-UI-37854, concluding claimant voluntarily left work without good cause. On May 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision to the extent it was relevant and based on the record.

FINDINGS OF FACT: (1) Ivan M. Karmel, P.C. employed claimant as a legal secretary from November 13, 2014 to March 2, 2015.

(2) Claimant disliked the manner in which the owner criticized his performance after a February 16, 2015 calendaring problem and a March 2, 2015 division of assets matrix he was asked to redo after an unsuccessful initial attempt. Following a discussion with the owner about the matrix, claimant attempted to work on it, and felt unable to do it. Claimant quit work on March 2, 2015 because he felt the owner was disrespectful and abusive.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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) (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 quit work after concluding that the owner treated him disrespectfully and used abusive language toward him. Claimant alleged that in February 2015 the owner called him a "shit for brains" and on the day he quit work commented that claimant "must not be very intelligent." Transcript at 5. The owner testified, and denied having made any such comments. *See* Transcript at 39, 45. Another witness, who more likely than not would have been in a position to hear any such comments, testified that she did not hear the owner using disrespectful or abusive language toward claimant. *See* Transcript at 24-25, 41.

Claimant argued that neither employer witness offered credible testimony. We have reviewed the record in its entirety, however, and find no objective basis upon which to conclude that the employer's witnesses perjured themselves during the hearing in this matter. Claimant alleged in his argument, for example, that the employer's witness's ability to hear the owner question claimant aggressively about the matrix but failure to hear the owner call claimant names or insult his intelligence meant that the witness was fabricating her testimony. However, it is just as likely that she testified as she did because she did not hear the owner's comments or because the owner did not make the comments claimant alleged. Absent an objective basis for concluding that the employer's witnesses were not credible, their consistent testimony refuting claimant's allegations has more weight than claimant's version of events. Claimant therefore did not meet his burden to establish by a preponderance of the evidence that events occurred as he alleged, and that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant quit work without good cause. He is disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 15-UI-37854 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.