

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0595

Reversed
Disqualification

PROCEDURAL HISTORY: On March 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision #74104). The employer filed a timely request for hearing. On April 29, 2015, ALJ Wyatt conducted a hearing, and on April 30, 2015, issued Hearing Decision 15-UI-37750, affirming the administrative decision. On April 19, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) O'Reilly Auto Parts employed claimant as an assistant manager from September 23, 2014 to February 17, 2015.

(2) Sometime in October 2014, the mother of claimant's co-worker visited the store where claimant worked and introduced herself as the co-worker's mother. Claimant said, "So you're responsible for her." Audio at 19:52. Claimant intended his remark to be a joke. The next day the co-worker asked claimant what he told her mother. When claimant told the co-worker what he said, the co-worker responded that her mother was upset by the remark because she believed it to be a comment on the co-worker's lifestyle. The co-worker complained about claimant's remark to the store manager. The store manager spoke to claimant and the co-worker and concluded it was a misunderstanding between the two individuals. Audio at 36:01.

(3) Sometime in November 2014, the co-worker who had previously complained about claimant's remark to her mother told the store manager that claimant had inappropriately touched her. The employer's human relations department investigated the complaint and determined it had no merit. For several weeks, claimant and the co-worker were not permitted to work alone together in the store.

(4) Sometime prior to February 17, 2015, claimant learned that he and the co-worker who had complained about him would be working alone together in the store for a few hours on February 17, 18 and 19. Claimant told the store manager that he was very uncomfortable working alone with the co-

worker. The store manager contacted the district manager, who told the store manager that the employer's human relations department had determined that claimant and the co-worker could work alone together, and that because the employer was short-handed, the schedule could not be changed. After the store manager conveyed this information to claimant, claimant again expressed his discomfort at working alone with the co-worker. The store manager called the district manager and told him about claimant's reluctance to work alone with the co-worker; the district manager said he would contact the employer's human relations department to see if something could be worked out.

(5) On February 17, 2015, the store manager told claimant that the district manager was attempting to work something out regarding his work assignment. Claimant told the store manager that he was quitting his job. Claimant voluntarily left work because he was unwilling to work alone with the co-worker and run the risk that she would again make false allegations against him.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude 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 his job because he was uncomfortable working alone with a co-worker who had previously complained about his behavior. The circumstances claimant faced – that he would be placed in a situation where, due to a lack of witnesses, he would lack a credible defense against any complaints the co-worker might make about him – constituted a grave situation. Claimant's actions in quitting his job were not those of a reasonable and prudent person, however, because he had an alternative to leaving work. Claimant's supervisors had taken his concerns about his situation seriously, and the district manager had contacted the employer's human relations department in an attempt to find a solution to claimant's uncomfortable work assignment. Claimant had the reasonable alternative of waiting for a response from the human relations department before deciding whether to quit his job. Because claimant did not do so, he failed to demonstrate he had no reasonable alternative but to leave work.

Claimant voluntarily left work without good cause, and is disqualified from the receipt of benefits based on this work separation.

DECISION: Hearing Decision 15-UI-37750 is set aside, as outlined above.

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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