

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0642

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83131). Claimant filed a timely request for hearing. On May 21, 2015, ALJ Clink conducted a hearing, and on May 22, 2015, issued Hearing Decision 15-UI-38992, affirming the Department's decision. On May 30, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he presented new reasons about why he decided to leave work and other new information that contradicted his testimony at hearing. Claimant did not explain why he was unable to offer this information into evidence at the hearing or otherwise show that he was prevented by factors and circumstances beyond his reasonable control from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider claimant's new information. EAB considered only information received into evidence at the hearing when reaching his decision.

FINDINGS OF FACT: (1) Western Pneumatics, Inc. employed claimant as a project engineer from February 25, 2013 until January 30, 2015.

(2) In 2012, the employer expanded its operations to include a facility in Ruston, Louisiana. Claimant participated in some ongoing projects occurring at the Ruston facility as well as projects at the employer's main worksite in Eugene, Oregon.

(3) Sometime during his employment, claimant was asked to gauge the ability of some vessels to safely withstand explosions in a work environment. Claimant thought that the software program he was using for this purpose was not adequate and that he was not properly trained to use the software. Claimant did not state any concerns to his supervisor or any other employer representative about the adequacy of the software or his training on it. Claimant did not ask his supervisor or any other employer representative for assistance in using the software.

(4) Sometime during his employment, claimant went to the Ruston facility to determine the progress on one of the employer's ongoing projects there. Shortly after he arrived, claimant determined that several errors had occurred in the work on that project that could jeopardize workers' safety, and he arranged for a new person to handle on-site quality control at the Ruston facility. Transcript at 12-13. Claimant and his direct supervisor corrected all the safety issues. Transcript at 15, 22.

(5) Sometime during his employment, claimant went to the Ruston facility and observed that welding, grinding and the use of cutting torches were ongoing in the facility when there was flammable resin debris throughout the facility. Claimant was concerned that the work activities were unsafe because they could ignite the resin and there was only one available exit from the facility in the event of a fire. Transcript at 18. Claimant had to "fight tooth and nail" with the employer's chief financial officer to install additional emergency exits throughout that allowed for adequate escape routes if a fire broke out at the Ruston facility. Transcript at 18, 19. Claimant's safety concerns were resolved.

(6) Sometime during claimant's employment, the employer was installing equipment for a project on concrete pads. Claimant observed that the concrete pads were placed directly on mud and not on a solid impervious foundation. Claimant was concerned that there would be significant damage if the mud beneath the concrete pads washed away. Transcript at 19. Claimant did not raise these concerns with his supervisor or any other representative of the employer.

(7) Sometime during his employment, a compressed air line at the Ruston facility blew out when subcontracted workers were installing a fan next to the air line. One of the subcontracted workers was killed. The employer did not know that it was unsafe for the subcontracted workers to perform the installation work before this incident. Transcript at 25. After the incident, the employer closed down the Ruston site to investigate and did not reopen the site for additional work until precautions were taken and it was safe for work recommence. Transcript at 39. Because personnel at the Ruston site did not call claimant to inform him of the accident, claimant assumed that the employer was trying to hide unsafe conditions from the employees and subcontractors working at that site.

(8) On other occasions during his employment, claimant observed other conditions that he thought were safety violations in the Eugene facility or the Ruston facility. Whenever claimant "pushed" the employer's senior management or other representatives about these safety issues, they were corrected. Transcript at 15.

(9) Sometime during claimant's employment, the employer discovered that a male was using the women's restroom to defecate. The employer then placed key codes on the door to the women's restroom to ensure that it was used only by authorized employees. Transcript at 17. Claimant suspected that the employer's purchasing director was the male who had entered and used the women's restroom. Transcript at 17, 22. Claimant thought that such behavior by a member of the employer's management was offensive.

(10) Sometime around January 29, 2015, claimant was discussing one of the employer's proposed future products with one of the employer's vice-presidents in his office. During this conversation, the employer's president and chief executive officer (CEO) walked up to claimant in claimant's office and stated, "Who the fuck works here?" and "What the fuck does he [claimant] do to deserve the corner

office?” Transcript at 16, 30. Claimant was offended that the CEO did not know who he was, and asked the CEO “What’s the problem?” Transcript at 16. The CEO replied, “Nothing is really my problem. I just don’t know what is going on here.” Transcript at 16. Later, claimant was using the men’s restroom on a floor different from than the floor on which his office was located. When claimant left the restroom stall the CEO happened to be in the restroom and stated to claimant, “What the hell am I [claimant] doing going to the restroom up here [on a floor above the floor of his office].” Transcript at 17. Claimant was offended that the CEO objected to his use of the restroom.

(11) On January 29, 2015, claimant asked his direct supervisor, a fellow project engineer, a vice-president and the chief financial officer to attend a meeting to discuss some changes on a project on which he was working. At that meeting claimant told them the change that he wanted to discuss was that he intended to resign from work and the employer needed to appoint a new project engineer. Transcript at 35. Claimant did not mention safety issues, personal stress or the atmosphere in workplace environment as reasons for quitting work. Claimant’s supervisor told him he did not need to work for a two week notice period and it would be sufficient if claimant worked until the end of the workday on Friday, January 30, 2015. Claimant agreed to work through January 30, 2015.

(12) Claimant left the workplace on January 30, 2015 and did not return. Claimant voluntarily left work on January 30, 2015.

CONCLUSIONS AND REASONS: 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 did not dispute that he did not give the employer any reasons for his decision to leave work. However, at hearing, claimant testified that he decided to leave work because the employer was allowing serious safety issues to go unresolved in the workplace, he was experiencing stress over those safety concerns and the overall workplace environment was “toxic.” Transcript at 9, 10, 11, 12, 13, 15. The specific safety concerns which claimant described are set out in the findings of fact and claimant agreed that most of them were resolved by actions that he or the employer took before he decided to quit. Transcript at 13, 15, 18, 19, 22. Claimant also stated that “the pieces [of projects] that I was directly involved in that I found the [safety] errors on were corrected” and “I did push and those [safety] issues were corrected.” Transcript at 15. Unsafe conditions that the employer corrected before claimant quit work do not constitute objectively grave reasons for claimant to leave work because the employer’s corrective actions mooted any gravity. The two safety conditions which claimant described but did not affirmatively state had been corrected appeared to have been conditions of which claimant did not notify the employer and he did not show that the employer was aware of them or reasonably should have been.

With respect to the allegedly inadequate software to test the strength of the employer's vessels, claimant did not demonstrate that the software was actually inadequate, did not directly dispute the testimony of his direct supervisor that it was adequate if used properly and did not contest that, if he had asked his supervisor for assistance in using the software, the supervisor would have given him the necessary instruction. Transcript at 39, 41. With respect to the concrete pads, claimant did not suggest that he had informed the employer of any safety hazards associated with them, or that the employer refused to correct an unsafe condition of which it had been made aware. A reasonable and prudent project engineer exercising ordinary common sense, who had overall responsibility to coordinate the design, fabrication and installation on a project would have concluded that it was part of his job to inform the employer of unsafe conditions on a project and would not have reasonably concluded that he needed to quit work over such conditions until, at the least, he notified the employer of them and the employer refused to correct them. Similarly, a reasonable and prudent project engineer who was assigned to test the strength of certain vessels and thought that the software he was using was inadequate to do so, would not have concluded he needed to quit work because the employer was producing unsafe vessels until he had informed the employer of his concerns and sought further assistance in using the software for these testing purposes. While claimant generally contended that he was unable to raise his specific safety concerns with the employer because feared retaliation, it was clear from claimant's testimony that he had in the past informed the employer of unsafe conditions and he did not suggest or show that he had been retaliated against on those occasions. Transcript at 7, 8, 9, 12. Further, aside from his general contention, claimant did not describe any actions by the employer against him or any other employees that could reasonably be construed as retaliatory or would reasonably cause him to fear retaliation. Absent such evidence, a reasonable and prudent project manager in claimant's situation would not have objectively concluded that he would be retaliated against or otherwise harmed for bringing unsafe working conditions to the employer's attention.

Claimant also raised the situation at the Ruston facility involving the death of the subcontracted installer as evidence of the employer's tolerance for unsafe working conditions. Transcript at 19, 20. However, claimant agreed that the employer could not have known that unsafe conditions existed in Ruston until the death of the installer and did not dispute that the employer shut down the Ruston site, investigated the incident and did not allow work to resume until safety precautions had been implemented. Transcript at 25, 38, 39. An unsafe condition of which the employer was not aware, and which the employer promptly investigated and corrected after the hazard was revealed, reasonably was not a grave reason for claimant to leave work. Claimant also generally alluded to other unsafe conditions on the employer's projects, but did not describe them with any specificity. Transcript at 19. However, the employer's witnesses testified that the employer took workplace safety very seriously, and it can be reasonably inferred that the employer was not aware of any unresolved safety issues in its workplaces. Transcript at 29-30. In view of this rebuttal to claimant's contention and claimant's failure to provide specific evidence of alleged ongoing, uncorrected workplace hazards, claimant did not meet his burden to show that the employer failed on a continuing basis to take appropriate steps to ensure workplace safety or that was a grave reason for him to leave work.

Claimant also contended that stress he was experiencing over unsafe workplace conditions caused him to leave work. Transcript at 9, 10. However, claimant affirmatively testified that he did not seek treatment for this stress, which undercuts any contention that any stress he had experienced was serious enough to constitute a grave reason to leave work. Transcript at 10. Furthermore, claimant did not present specific evidence that the stress which he alleged caused him grave symptoms or any harm.

Claimant also contended that he decided to submit his resignation on January 29, 2015 because of the behavior of the CEO around that date, in his office and in the men's room, was the "final straw." Transcript at 15. Accepting claimant's testimony about the CEO's behavior, it was ill-mannered and crude. However, absent evidence that such behavior occurred on an ongoing basis and involved some sort of abuse to claimant (e.g., personal slurs, invective, persistent attacks or the like), it was not the type of behavior that created the ongoing oppressive work environment, which is generally required to show good cause for leaving work based on a supervisor's behavior. See e.g. *McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to "sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits). A reasonable and prudent project manager of ordinary sensitivity would not have concluded that the CEO's behavior on the one day claimant described was so profoundly offensive or disturbing that it was a grave reason to leave work.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-38992 is affirmed.

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

DATE of Service: July 23, 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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