

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0808

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91433). Claimant filed a timely request for hearing. On July 1, 2015, ALJ S. Lee conducted a hearing, and on July 8, 2015 issued Hearing Decision 15-UI-41244, affirming the Department's decision. On July 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Centerplate employed claimant from February 14, 2014 until April 8, 2015, last as a chef at a training facility for the Portland Timbers.

(2) Claimant was initially hired to work as a dishwasher in the kitchen at Providence Stadium in Portland Oregon, where the Timbers played their matches. On September 1, 2014, claimant was promoted to prep cook in the stadium kitchen. On February 16, 2015, claimant was again promoted and became chef in the kitchen at the Timbers' training facility in Beaverton, Oregon.

(3) Before claimant accepted the chef position at the training facility, the employer's executive chef told him that the position was as close to a full-time position as the employer could provide. Audio at ~23:38, ~32:33, ~45:24. Claimant thought that he would be work eight to ten hours per day after he became chef at the training facility.

(4) After February 16, 2015, when he started work at the kitchen in the training facility, claimant became displeased with the working conditions. Claimant perceived that the two refrigerators in the kitchen were not holding food at correct temperatures and complained "more than once" about them to the executive chef. Audio at ~21:06. In early April 2015, after claimant complained again about the performance of one of the refrigerators, the executive chef arranged for its repair. Audio at ~21:28.

Claimant also thought that he was not properly trained to operate one of a few food warmers in the kitchen. The executive chef thought that as a result of his training in the stadium kitchen, claimant would know how to operate a food warmer and did not specifically train claimant on its operation. On one occasion, when the executive chef was at the training facility, claimant tried to use the food warmer in the presence of the executive chef to learn how to operate it. Audio at ~13:17. However, the food warmer malfunctioned and claimant was unable to learn how to use it.

(5) During the time he was working at the training center, claimant did not have a key to the facility, which would have allowed him to enter and leave the facility when he wished. Sometimes, claimant was unable to enter the training center to start his work at the scheduled time of 8:00 a.m. and he had to contact the executive chef to arrange his entry. Sometimes, representatives from the Timbers, who needed to lock the facility because claimant did not have a key, rushed claimant to complete his work so they could leave. Claimant disliked being hurried. Claimant complained to the executive chef about being pressed to leave earlier than he wanted and the chef told him to try to work more quickly. Audio at ~12:10, ~25:19.

(6) On occasions in approximately March and April 2015, claimant mentioned to the executive chef that he did not like working at the training facility and asked if he could transfer back to the stadium kitchen. The executive chef told claimant that there were no positions available in the stadium kitchen at that time.

(7) On April 8, 2015, when claimant arrived in the kitchen, one of the refrigerators was not operating. When a repair person arrived, claimant learned that the refrigerator had been turned off. Claimant concluded that some unknown person was “playing around” with him, or trying to interfere with ability to perform his work. Audio at ~9:38. Later that day, claimant called the executive chef on his cell phone and told the chef that he was unhappy working at the training facility and he did not want to work there anymore. Audio at ~38:02. Claimant told the chef that the commute from his home in Gresham, Oregon to the training facility was longer than he had expected and he wanted to return to the stadium kitchen. The chef asked claimant to stay at the training facility until he arrived. The chef wanted to discuss why claimant thought he needed to leave work. Claimant agreed to stay. Within approximately fifteen minutes, the chef arrived at the training facility, but claimant was gone. Claimant voluntarily left work on April 8, 2015.

(8) Later on April 8, 2015, the executive chef called claimant and when he was not able to reach him directly left a message. The chef told claimant to call him if he wanted to talk about anything. Audio at 42:05. Claimant returned the chef’s call on April 9, 2015. During this call, claimant told the chef that on April 8, 2015 he had been concerned that someone had interfered with his work by intentionally turning off the refrigerator.

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.

While claimant expressed his dissatisfaction with continuing to work in the training center kitchen and his desire to transfer back to the stadium facility, the reasons that he supplied for leaving his position at the training center were not grave reasons. At the outset, claimant testified that, regardless of what he told the executive chef on April 8, 2015, the length of his commute to work was “not really” a factor in his decision to leave work. Audio at ~44:36. Claimant contended that his decision to leave was based on the “work environment” at the training center. Audio at ~44:36. Although claimant cited the allegedly faulty operation of the refrigerators in the kitchen, and his concerns that he would be required to serve “bad food” to the Timbers as reasons for leaving work, he did not assert that this circumstance ever occurred. Audio at ~22:07. Claimant also generally contended that the executive chef did not respond to his requests to have the refrigerators looked at, but when asked to describe the details of specific requests, he testified that the employer sent someone to repair the refrigerators on those occasions. Audio at ~9:40, ~21:06. While claimant cited his lack of training on the use of one food warmer as contributing to his decision to leave work, he did not dispute that there were other food warmers in the kitchen that he knew how to use and could have used. Audio at ~12:30, ~13:02, ~35:09, ~35:43. When the executive chef attempted to show claimant how to operate that particular food warmer, it was no one’s fault that it malfunctioned and needed to be repaired. There was no indication that any harm resulted to claimant or his work performance as a result of his stated inability to use one food warmer or that the executive chef was not going to show him how to operate it once it was functional. Claimant did not show that the condition of the kitchen equipment and his lack of training in the operation of the food warmer were grave reasons for his to leave work.

While claimant also contended that he thought the executive chef had misrepresented the number of hours he would work as a chef at the training center, he also stated that he was “okay” with those hours and his real complaint that he could not enter or leave the training center kitchen when he wanted because he did not have a key to the facility. Audio at ~12:20, ~25:25. As well, claimant did not show that any specific harms resulted to him from working fewer hours than he thought, or that the executive chef reasonably caused him to think he would be working eight to ten hours per day by merely stating that claimant was going to have hours as close to full-time as the employer could provide after he became chef. Audio at ~23:38, ~32:33, ~45:24. Although it likely would have been more convenient for claimant to have had his own key to the training center and to be able to enter and leave the kitchen when he wanted, he also did not show that any specific harms resulted to him or his work performance by not have free accessibility to the training center, such as he was unable to perform his work in the time allotted time or that the Timbers’ representatives who, on occasion, urged him to speed up finishing his work were abusive or unpleasant to him. Because claimant did not show that his circumstances in not having a key were more than a matter of inconvenience, he did not show that the lack of a key was a grave reason to leave work.

Finally, claimant appeared to contend that he left work on April 8, 2015 because he thought that an unknown person had intentionally turned off the refrigerator and was “playing around” with him. Audio at ~9:38. Claimant did not cite any prior instances when suspicious things happened to the equipment in the workplace or to him. A reasonable and prudent person would have assumed that a single instance of

an unexplained occurrence in the workplace was merely happenstance and would not have concluded that it was a grave reason to leave work. Even if claimant was especially troubled by the incident with the turned-off refrigerator or with his concerns over the equipment, the lack of a key or the employer's failure to transfer him back to the stadium kitchen, he did not show that waiting for the executive chef to arrive at the training center on April 8, 2015 and discussing these issues with him was reasonably likely to be futile and would not rectify them. On this record, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have concluded that claimant's concerns were grave reasons to leave work and would not have concluded that he had no alternative other than to leave work without first raising his specific concerns with the executive chef on April 8, 2015, particularly when the chef had expressed a willingness to listen seriously to claimant's concerns. Audio at ~ 40:04, 42:05.

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-41244 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: September 3, 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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