

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0831**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #121641). Claimant filed a timely request for hearing. On June 25, 2015, ALJ Triana conducted a hearing, and on July 2, 2015, issued Hearing Decision 15-UI-41009, affirming the administrative decision. On July 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Jimco Electric employed claimant as a technician from February 9 to May 1, 2015.

(2) On May 1, 2015, claimant reported to work at Lebanon Hospital at 7 a.m. At 7:45 a.m., a coworker texted claimant and told him the supervisor had instructed the coworker to tell claimant to go to another job site, where the coworker was already working.

(3) Claimant texted the supervisor and told him that to avoid confusion, it would be best if the supervisor contacted claimant directly to give him instructions.

(4) After receiving claimant's text, the supervisor called claimant. Claimant told the supervisor it was unprofessional for the supervisor to have a coworker give claimant directions. Claimant and the supervisor began to argue about the supervisor's management practices, and the conversation became heated; both individuals were angry. The supervisor told claimant that "You can't keep going down this path" Transcript at 23. He told claimant that if he continued, it would be claimant's last day. Claimant responded that this was his "last second" and discontinued the call. Transcript at 21.

(5) After ending the phone call with his supervisor, claimant went to the employer's office to turn in his tools and receive his final paycheck. While awaiting his check, claimant told the supervisor that he had been unhappy about his working conditions on the job.

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

At hearing, the claimant asserted that the employer discharged him on May 1, 2015. The employer, however, contended that claimant voluntarily left work. We therefore begin our analysis by considering the nature of claimant's work separation.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant and his supervisor differed in their account of the May 1, 2015 phone call that resulted in claimant's work separation. According to claimant, the supervisor told him that it *was* his last day. According to the supervisor, he warned claimant that if he continued to argue with the supervisor it *would be* claimant's last day. Claimant admitted, however, that during their May 1 conversation, his supervisor told him "You can't continue going down this path." Claimant was extremely unhappy about his working conditions and believed that the company had mistreated him. Transcript at 26. Given claimant's anger, we find it more likely than not that he misunderstood or failed to hear his supervisor's statement that it would be claimant's last day if he continued to argue with the supervisor. Claimant mistakenly concluded that he had been discharged and left work. The employer had continuing work available for claimant and would have been willing to permit claimant to continue working. Transcript at 9. Based on this record, we conclude that claimant's work separation was a voluntary leaving.

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.

To the extent that claimant quit his job because he believed his supervisor had discharged him, he failed to demonstrate that this belief constituted good cause for leaving work. Claimant's anger about the way his supervisor treated him and his unhappiness with his working conditions caused him to misunderstand what his supervisor told him during their early morning phone call on May 1. Claimant had the reasonable alternative of waiting until his anger had subsided and asking his supervisor or the employer's owner what was the status of his job. A reasonable and prudent person would have sought this clarification before concluding he had been fired and leaving work.

Claimant voluntarily left work and failed to show good cause for doing so. He is disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-41009 is affirmed.

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

**DATE of Service:** August 18, 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](http://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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