

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0896

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 1, 2015, the Oregon Employment Department (the Department) issued an administrative decision concluding claimant voluntarily left work with good cause (decision # 113926). On June 3, 2015, the employer filed a request for hearing. On July 7 and 8, 2015, ALJ L. Lee conducted a hearing, and on July 16, 2015 issued Hearing Decision 15-UI-41567, concluding that the employer's request for hearing was filed in a timely manner and that claimant voluntarily quit work without good cause. On July 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Security Contractor Services Inc. employed claimant from March 14, 2000 until April 13, 2015 as a yardman. The employer is a wholesale fencing supplier.

(2) In December 2014, claimant was preparing an order for sale. The outside salesperson told claimant to stop and prepare a different order, a rush order, first. Claimant and the salesperson argued about the orders, yelled and used foul language toward each other. Claimant and the salesperson reported the incident to the supervisor, who discussed the incident with both employees. The salesperson apologized to claimant.

(3) On or about April 6, 2015, claimant was preparing an order for sale. The outside salesperson told claimant to stop and prepare a rush order instead. Claimant objected because he had almost completed the first order, and he and the salesperson began to argue. The salesperson got close to claimant and yelled at claimant. Claimant told the assistant supervisor about the incident.

(4) One of claimant's duties was to clear chain link fence material from the warehouse while the fencing was being manufactured. On or about April 7, 2015, one of the employer's chain link machine operators became angry with claimant because he had not removed all the chain link fencing material from the warehouse. The machine operator and claimant argued. The machine operator was angry and ran toward claimant. The assistant supervisor stopped the machine operator when he was about 20 feet from claimant, and the machine operator then left. Claimant did not report the incident to the supervisor, but the supervisor learned that there was tension between the machine operators and the yardmen and told

the machine operators they were responsible for clearing the fencing if the yardmen were occupied with customers.

(5) On April 13, 2015, claimant voluntarily left work because he had confrontations with coworkers, and was dissatisfied with how the employer responded to the confrontations.

(6) On April 28, 2015, the employer provided the Department with the employer's electronic mail address and agreed the Department could use the electronic mail address instead of the employer's postal address to send the employer the administrative decision. The Department did not tell the employer when it would issue the decision. The Department representative incorrectly recorded the employer's electronic email address. On May 1, 2015, the Department issued the administrative decision and sent it to the employer by electronic mail, using the incorrect address. The employer did not receive the decision sent by electronic mail.

(7) On May 27, 2015, the employer contacted the Department and determined the Department had sent the administrative decision to an incorrect electronic mail address. The same day, the Department sent the decision to the employer by U. S. Postal Service. On June 3, 2015, the employer filed a request for hearing.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer filed a timely request for hearing, and that claimant voluntarily left work without good cause.

Request for Hearing. ORS 657.269(2) provides that a request for hearing upon an administrative decision must be filed within 20 days after delivery of the decision or, if mailed, within 20 days after the notice was mailed to the appellant's last-known address. The Department did not deliver the administrative decision to the employer on May 1, 2015 because it used an incorrect email address to send the decision to the employer. The Department mailed the decision to the employer on May 27, 2015. The employer requested a hearing on June 3, 2015, within 20 days of the date the decision was mailed. Thus, the employer filed a timely request for hearing.

Voluntary Quit. 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work because he had confrontations with his coworkers, and was dissatisfied with the employer's response to his complaints about the confrontations. To the extent claimant left work due to arguments with his coworkers, claimant did not establish good cause to quit. The record shows claimant had oral arguments with two coworkers during his final week of work, but the preponderance of the evidence fails to show that the coworkers physically threatened or grabbed claimant, as he alleged happened, during his final week of work or in the past. Without more, three oral

arguments over the course of several months, do not present a reason of such gravity that a reasonable and prudent person of normal sensitivity would have no reasonable alternative but to leave work.

To the extent claimant left work because he was dissatisfied with the employer's response to his complaints about his coworkers' behavior toward him, claimant also lacked good cause to leave work. The record shows claimant reported the December 2014 argument to the supervisor, and that the supervisor immediately addressed the incident with both employees. Where the preponderance of the evidence fails to show claimant told the supervisor that the salesperson "got physical" with claimant as claimant alleged (Transcript at 30), the employer was not obligated to discipline the salesperson. Moreover, to the extent the record shows the employer failed to respond to claimant's complaints when he reported other two arguments to the assistant supervisor, claimant failed to show it would have been futile to also complain to the supervisor when he was dissatisfied with the assistant supervisor's response to the complaints.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-41567 is affirmed.

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

DATE of Service: September 1, 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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