

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1013

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 154940). Claimant filed a timely request for hearing. On August 13, 2015, ALJ S. Lee conducted a hearing, and on August 19, 2015 issued Hearing Decision 15-UI-43227, affirming the Department's decision. On August 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument with his application for review but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Professional Security Consultants employed claimant as an unarmed security officer for Bridgeport Village in Tigard, Oregon from May 15, 2014 to March 21, 2015.

(2) During his 10-month tenure with the employer, claimant worked under four consecutive directors of security. On multiple occasions, claimant complained to the current director of security that employees failed to comply with company policy and procedure, creating difficulty for the other personnel. Amongst claimant's areas of complaint were failure to wear uniform, personal use of cell phones and computers, excessively long breaks, and officers not adhering to policies related to patrolling and call-out. Some of the violations occurred among managers, including the assistant director of security. Each time that claimant registered a complaint, he was told it would be looked into. However, claimant's complaints when unaddressed due to the high turnover rate of the employer's directors of security.

(3) On or about March 8, 2015, claimant confronted the assistant director of security because there was a false call-in to a location, and claimant observed three officers patrolling together, which was against policy. Claimant was training a new employee and felt the clear disregard of the policies was a problem.

When claimant confronted the assistant director of security about the assistant director of security's own behavior, the assistant director of security told claimant that he could do what he wanted, and claimant was not in a position to challenge him. Claimant reported the incident to the director of security and regional director, who said the director of security would look into it.

(4) On March 15, 2015, gave the director of security written notice that he was resigning, effective March 20, 2015. The director of security, who was quitting work in a few days, asked claimant not to quit before meeting with the incoming director of security, who might be able to address claimant's concerns. Claimant agreed to speak with the incoming director of security before quitting, but did not withdraw his letter of resignation.

(5) On March 20, 2015, claimant met with the new director of security and asked him if he was aware of claimant's letter of resignation, and informed the director of security that he wanted to stay. However, claimant did not withdraw his letter of resignation, because he wanted to know whether the director of security wanted him to continue working for the employer, and the director said that he did. The director of security made no decision on whether to accept or decline claimant's letter of resignation, and claimant believed the director of security "would get back to" him. Audio Record at 19:00.

(6) When claimant left work on March 20, he was not scheduled to work the next day, and was not told that he would be. However, the employer later scheduled claimant to work on March 21, 2015.

(7) On March 21, 2015, the director of security sent claimant a text message asking claimant if he was aware he was on the schedule to work from 7:00 a.m. to 3:00 p.m. that day, and stating that he understood if claimant was not aware. The director of security further stated that if claimant decided to continue working for the employer, they should discuss a regular schedule to accommodate someone of claimant's worth. Claimant replied that he was not on the schedule when he left work on March 20, and that no one told him he would be. Claimant further stated that he wasn't sure the director of security wanted him to continue working for the employer, given that the director of security did not express an opinion on that on March 20. The director of security replied that he was sure claimant was not told he would be on the work schedule, that it was not claimant's fault. He also asked claimant to let him know what claimant's status was going to be so that they could move forward.

(8) Claimant sent the director of security a text message asking him why he did not ask claimant to continue working for the employer. Claimant sent the director of security another text message stating that he told the director he wanted to stay, but just needed to know if the director of security wanted him to stay, and that the director of security said nothing. The director of security replied that that was not entirely clear to him, but that he wanted claimant to continue working for the employer if claimant so desired.

(9) The director of security sent claimant another text message stating that he wanted claimant to make his own decision on whether to continue working for the employer. Claimant sent the director of security a text message asking if there was any chance he could transfer to one of the employer's other locations and work weekdays, but no weekends or graveyard shifts. The director of security replied that that was an idea he could manage, and asked claimant which location he had in mind. Claimant sent the director of security a text message stating that he did not need to work 40 hours per week, either.

(10) Claimant and the director of security exchanged a total of 27 text messages on March 21, 2015. Claimant did not withdraw his letter of resignation, and believed the director of security was going to “try to work something out and get back to” claimant. Audio Record at 23:20. However, the director of security instead decided to accept claimant’s letter of resignation. The director of security processed claimant’s work separation, indicating that claimant had quit work.

(11) Due to an outdated work schedule, the employer’s graveyard officer mistakenly believed that claimant was scheduled to work on March 26, 2015. On March 26, 2015, the graveyard officer telephoned claimant, asking him if he was going to report for work. Claimant stated that he was not going to report for work, and was not aware that he was scheduled to work. Claimant sent the director of security a text message asking what was going on. The director of security replied with three text messages explaining the graveyard officer’s error, and confirming that claimant was “off the schedule,” would “not be on any future ones of course,” and was “good to go.” Exhibit 1 at 15-17.

(12) Claimant and the director of security exchanged a total of six text messages on March 26, 2015. Claimant never asserted that he believed he and the director of security had agreed that claimant would continue working for the employer.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

The first issue in this case is the nature of the work separation. OAR 471-030-0038(2)(b) (August 3, 2011) states that 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. 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

On March 15, 2015, claimant moved to sever the employment relationship by notifying the employer in writing that he was quitting work on March 20, 2015. Although claimant had several opportunities to withdraw his letter of resignation before the director of security accepted it on March 21, 2015, he failed to do so. Thus, although claimant may have been willing to continue to work for the employer after March 21, 2015, the employer did not prevent him doing so. Because claimant could have continued to work for the employer an additional period of time after March 21, 2015, the work separation is a quit, and not a discharge.

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 work because other employees and managers, including the assistant director of security, violated the employer's policies on multiple occasions despite claimant's complaints to the director of security and the employer's regional director. However, claimant failed to show the policy violations created a work environment so onerous for claimant that no reasonable and prudent person would have continued to work for his employer for an additional time, especially without allowing the new director of security an opportunity to address claimant's concerns. Absent such a showing, claimant failed to establish that he quit work with good cause. Claimant therefore is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-43227 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: September 28, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.