

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1268

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84558). Claimant filed a timely request for hearing. On October 14, 2015, ALJ Murdock conducted a hearing, and on October 19, 2015 issued Hearing Decision 15-UI-46113, affirming the Department's decision. On October 27, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record. Claimant did not explain why he did not offer this information during the hearing, and otherwise failed to show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Weldon's Enterprises, Inc. employed claimant in its dry cleaning store as a shirt presser from June 8, 2015 until June 10, 2015. Claimant's job was hard and unpleasant.

(2) On June 8 and 9, 2015, claimant worked full days, from 7:00 a.m. until 3:00 p.m. On June 10, 2015, claimant reported for work. When the owner returned to the store premises at approximately 11:00 a.m. on June 10, 2015, claimant was not there. The owner asked the store manager and claimant's coworkers where claimant had gone. They told the owner that claimant had not returned to work after his 10:00 a.m. break.

(3) On June 10, 2015, claimant voluntarily left work and did not return. When claimant left the workplace, the employer was not displeased with his work and had tasks for him to complete.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Claimant contended that the employer's owner told him on June 10, 2015, with no explanation and for no reason, to "go home," from which claimant assumed that he had been discharged. Audio at ~4:14. The employer's owner contended that claimant, with no explanation, did not return to work after his break on June 10, 2015, and the owner assumed claimant had quit work. Audio at ~7:48. OAR 471-030-0038(2) sets out the standards for determining whether a work separation should be considered a voluntary leaving or a discharge. If at the time of the separation, claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If, at the time of the separation, claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

The testimony of both parties about the work separation was irreconcilable. Based on claimant's testimony that the employer had not criticized his performance, there had been no workplace issues or problems and that there "was quite a bit of work" remaining for him to complete on June 10, 2015, it is not plausible that the owner suddenly and abruptly told him to go home. Audio at ~6:35, ~6:46. The owner's characterization of claimant's job as "nasty and horrible," also weighs against the employer discharging claimant for no apparent reason on June 10, 2015 since it would need to find a replacement employee, but does suggest a plausible reason for claimant to decide not to return to work after his break on June 10, 2015. Audio at ~9:12. Because it is most consistent with the preponderance of the reliable facts in the record, it appears most likely that claimant quit work on June 10, 2015, when he left the workplace in mid-shift and did not return. Claimant's work separation was a voluntary leaving on June 10, 2015.

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.

Because claimant contended that he was discharged, he did not present any reasons for leaving work. No such reasons, let alone grave ones, are discernible from the record. Claimant did not meet his burden to show that grave reasons motivated him to quit, or that he had good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-46113 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: November 19, 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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