

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1281

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113455). Claimant filed a timely request for hearing. On October 22, 2015, ALJ M. Davis conducted a hearing and issued Hearing Decision 15-UI-46430, affirming the Department's decision. On October 26, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Farmer's Building Supply, Inc. employed claimant from March 15, 2015 until August 14, 2015, last as a purchasing agent.

(2) Beginning in approximately 2007, claimant started working for the employer as a purchasing agent. After 2007, claimant's workload and the number of accounts he managed increased. Claimant experienced stress and pressure as a result of his workload.

(3) In approximately 2010, claimant began to experience migraine headaches that he attributed stress at work. Claimant sought treatment from a physician for the migraines and was prescribed medication. By 2015, claimant no longer was taking medication for migraines.

(4) By 2015, the economic downturn had resulted in the employer's purchasing agents taking on additional work. In April 2015, the employer notified its salaried employees, including claimant, that they were expected to work forty-five hours each week. Claimant spoke on occasion with his supervisor, who was one of the employer's owners, about his workload. Claimant mentioned to the supervisor that he was having trouble accomplishing his work in the nine hours he was expected to work

each day. Audio at ~31:08. Sometimes, claimant told his supervisor that he felt a great deal of pressure at work. Audio at ~32:00. Claimant never asked his supervisor for help in accomplishing his work tasks and was not specific about the impacts on him of the stress and pressure that he felt at work. The employer was generally aware that claimant was “working long hours.” Audio at ~22:30.

(5) Although claimant continued to experience stress and pressure from work after April 2015, he never asked his supervisor for help in accomplishing his work tasks or shortening his work days. Claimant never asked the employer to adjust his workload or propose changes that would decrease his work hours. Claimant never asked the employer if it had any less stressful positions into which he could be moved. Claimant never told the employer that his long hours and work-related stress were making him unwell.

(6) Before July 16, 2015, claimant’s supervisor did not observe that claimant was having difficulty completing his work, and the supervisor thought that claimant was generally well prepared in the workplace and capably performing his work duties. The employer had no plans to discipline claimant or to discharge him for his work performance.

(7) On July 16, 2015, claimant notified the employer that he was going to leave work effective July 31, 2015. At the employer’s request, claimant did not leave work until August 14, 2015. When claimant resigned, he told the employer he was doing so because “it was time for him to move on.” Audio at ~21:27, ~33:50, ~38:08. Claimant did not inform the employer that he was leaving as a result of the pressure and stress from his workload because he did not the work separation to be “negative or nasty.” Audio at ~38:30.

(8) On August 14, 2015, claimant voluntarily left work.

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.

Claimant testified that he left work when he did because he “couldn’t take it anymore,” referring to the stress and pressure he experienced at work. Audio at ~9:07. Claimant contended that he spoke several times to one of the employer’s owners, who was not the head of the purchasing department and not his direct supervisor, about the stress and pressure he felt at work, that he needed assistance in performing his work and the owner told claimant to “suck it up.” Audio at ~10:46, ~10:55, ~13:05, ~16:50. That owner denied that claimant had such conversations with him, and the other owner, who supervised claimant, testified that claimant mentioned pressure and stress on only a very few occasions to him, was non-specific about it, and did not ask him for help accomplishing his workload. Audio at ~20:48, ~22:09, ~23:45, ~31:08. Both parties’ witnesses appeared sincere in their testimony and there was no

reason in the record to doubt the credibility of any of them. In a voluntary leaving case where, as here, the evidence on a disputed issue is equally balanced, the uncertainty must be resolved against claimant, who carries the burden of persuasion. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant did not meet his burden to show that he alerted the employer to his circumstances or tried to obtain assistance to ease the pressure and stress he contended that he felt at work.

Although claimant presented several reasons for why he did not make a more forceful attempt to seek help from the employer's owners or his supervisor, based on his belief such requests were not favorably looked upon by the employer, and that a transfer to a different, less stressful position would not work out over the long term, he did not rebut the apparently sincere testimony of both of the employer's witnesses that he was a long-time, valued employee with a great deal of product knowledge that, for those reasons, the employer would have tried to accommodate either through providing him assistance in performing his tasks or by transferring him to another position, if one was available. Audio at ~12:40, ~25:08, ~25:58, ~26:17, ~27:26, ~27:51, ~28:14. On these facts, a similarly situated reasonable and prudent person would not have concluded that he needed to leave work due to the stress and pressure of his workload until he first clearly explained his situation to the employer and gave the employer the opportunity to address his concerns. Because claimant did not take the steps of a reasonable and prudent person before he left work, claimant did not show that he quit work for a reason of such gravity that he had no reasonable alternative to quitting when he did.

Claimant did not meet his burden to show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-46430 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: November 17, 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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