

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1334

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75942). Claimant filed a timely request for hearing. On October 26, 2015, ALJ Murdock conducted a hearing, and on October 28, 2015 issued Hearing Decision 15-UI-46710, affirming the Department's decision. On November 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Hilton Fuel & Supply Company employed claimant as a truck driver from March 24, 2015 until July 30, 2015.

(2) When the employer hired claimant, claimant knew that he would be compensated \$0.36 for each mile that he drove. Claimant thought the employer would assign him runs that would allow him to drive between 2,500 and 3,000 miles each week, and enable him to earn between \$900 and \$1,050 each week. The employer told claimant his performance would be reviewed after his first 60 days working and he could receive a raise. At the time of his hire, the employer also told claimant that it would try to arrange for him to be home on weekends. The employer further told claimant that he and his dependents would be eligible for health insurance 90 days after he was hired, and the employer would pay 80 percent of the cost to cover him and claimant would pay 20 percent.

(3) During claimant's employment, the miles that he drove and his earnings were less than he expected and decreased each week. In April 2015, claimant drove on average of 2,921 miles each week, and earned an average of \$1,051 per week for the miles he drove. Exhibit 2 at 1. In May 2015, claimant drove on average 2,519 each week, and earned an average of \$906 per week for the miles he drove. Exhibit 2 at 1-2. In June 2015, claimant drove an average of 2,153 miles each week and earned an average of \$775 for the miles he drove. Exhibit 2 at 2. In July 2015, claimant drove an average of 1,990 miles each week, and earned an average of \$716 for the miles he drove. Exhibit 2 at 3. On July 5, 6 and 7th, claimant was unable to work, and the miles he drove for the month of July 2015 were less than they otherwise would have been. During these weeks, the employer's business for long, interstate truck runs

slowed down and claimant was assigned to shorter in-state runs, which caused a reduction in the miles he was assigned to drive.

(4) During the three and a half months that claimant worked for the employer, he was unable to return home on three weekends. Exhibit 1 at 1. Claimant's wife became pregnant in approximately late January 2015, and he wanted to be home with her on weekends. Claimant complained to the employer when he was on the road on weekends. Due to the nature of the trucking business, it was not uncommon for truck drivers to become stranded over a weekend due to customers' errors or the inability to locate a suitable return load for the driver.

(5) Sometime in approximately May or June 2015, the employer offered to allow claimant to begin driving a "maxi truck." The employer told claimant that he was going to receive a \$0.05 per mile raise after he started driving a maxi truck. As a result of this expected raise, the employer did not review claimant's compensation after 60 days as it had said it was going to do. The employer told claimant that he needed to personally meet with the manager to discuss the special requirements of driving the maxi truck before he received the \$0.05 per mile raise. After claimant started driving the maxi truck on June 18, 2015, his driving schedule did not readily allow him to personally meet with the manager because the two were usually not at the employer's yard during the same hours. On a few occasions, the manager asked claimant to discuss the maxi truck with him on Friday evenings when claimant was in the yard because he had just returned from a run. On those occasions, claimant was in a hurry to get home and deferred the meeting with the manager.

(6) Sometime around July 2015, claimant learned that it would cost him approximately \$800 out of pocket to cover himself and his wife under the employer's health insurance plan (\$150 for claimant and \$650 for his wife). Claimant had not expected the premiums for the insurance to be so high.

(7) On July 17, 2015, claimant called his manager and told him that he was going to resign as a result of the number of miles that he was driving, his failure to receive the raise he was promised if he started driving the maxi truck, the three times he was not able to return home for a weekend and the cost to him to insure himself and his wife under the employer's health insurance plan. Claimant thought that, given the cost of health insurance and the miles he was assigned to drive, the income he received was inadequate to support himself and his wife. The manager asked claimant to reconsider and told claimant that he would meet with him to discuss the raise and he would "backdate" the raise. Audio at ~31:29. Claimant told the manager that he was still going to quit and they did not need to meet.

(8) On July 18, 2015, claimant left a resignation letter for the manager stating that he was leaving work effective July 31, 2015 and setting out the same reasons for this decision that he had discussed with the manager on July 17, 2015. Exhibit 1 at 1.

(9) July 30, 2015, not July 31, 2015, was claimant's last day of work. On July 30, 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.

With respect to claimant’s failure to receive the \$0.05 per hour raise for driving the maxi truck, claimant contended that the manager never tried to have the meeting with him that was a condition to his receiving the raise and that he never declined to do so. Audio at ~21:37. Claimant also contended that the manager did not attempt to persuade him not to quit by promising to have the meeting about the maxi truck and making the pay raise retroactively effective. Audio at ~24:50. The manager testified to the contrary. Audio at ~24:50, ~31:29 ~32:18. There was no reason in the record to doubt the credibility of either witness and the testimony of both appeared sincere. Where, as here, the evidence on disputed issues is evenly balanced, the uncertainty in the evidence must be resolved in favor of the employer since claimant carries the burden of persuasion in a voluntary leaving. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Accordingly, the testimony of the employer’s witness has been accepted on these disputed facts.

As to the failure of claimant to receive the \$0.05 per mile raise, it does not give rise to a grave reason for claimant to leave work. A reasonable and prudent employee, who wanted such a raise, would have made himself available for the required meeting on the Fridays when he was asked to attend even if it intruded into his off work hours, and would not have deferred the meeting because he wanted to be at home as soon as possible. In addition, a reasonable and prudent employee for whom the \$0.05 raise was a dispositive factor in deciding whether he was going to leave work, would not have rejected the employer’s offer to hold the required meeting and to make the raise retroactive immediately after he had announced his intention to quit because he had not yet received the raise. Claimant did not meet his burden to show that the employer’s failure to give him the promised raise was a grave reason to leave work or that he had no reasonable alternative other than to leave work over it.

With respect to the three times in over three months of work that claimant was not able to return home for the weekend, this inconvenience was not a grave reason to leave a job as a long distance truck driver. Claimant had been a truck driver for approximately eight years and reasonably knew that schedule disruptions were not uncommon in the truck driving industry. Audio at ~8:18. Claimant did not attempt to rebut the testimony of the employer’s witness that it was expected that sometimes a long distance truck driver, like claimant, would occasionally become stranded out of town without a load and need to stay until a load was located. Audio at ~30:00. It does not appear that the very small number of times claimant was not able to return home for the weekend due to factors generally beyond the control of the employer was a grave reason for him, an experienced truck driver, to leave work. It was a foreseeable occurrence that claimant reasonably should have taken into account when he accepted a job to drive a truck hauling loads long distances. Moreover, claimant did not show that, beyond his preference to return home for weekends, any grave harms were experienced by him and his wife when he could not return home.

With respect to claimant's income, he did not show that the income he received was so minimal as to be a grave reason to leave work. While claimant generally commented that he was not able to pay his monthly bills on the income he obtained, he did not present specific evidence supporting this claim. Audio at ~5:45, ~7:15. Claimant did not mention his financial circumstances as a reason he was quitting work in his resignation letter. Exhibit 1 at 1. In addition, if claimant had accepted the manager's attempts to schedule the meeting on one of the Fridays when the manager tried to do so, he did not dispute that he would have received an increase of \$0.05 per mile, from \$0.36 to \$0.41, which was a 16 percent increase to his pay rate. On this record, claimant did not show that the pay he received was so meager that it was a grave reason to leave work or that it was beyond his control to increase it by 16 percent if he had attended the meeting that was a condition of his receiving that raise.

With respect to claimant's out of pocket costs to receive health insurance for himself or his wife, he did not contend that the employer's out of pocket charges to an employee to cover the employee or the employee's dependents were unreasonable. He did not contend that he had accepted the truck driving position because the employer had told him that family health insurance coverage through the employer was free of charge and, somehow, that he detrimentally relied on such a representation to his harm. While claimant might have disliked the cost he would incur in premium payments, he did not show that it was a grave reason to leave work when he did, or that leaving work would somehow reduce the costs he incurred for health insurance or improve his circumstances with respect to obtaining health insurance or increasing his earnings.

With respect to the reduction in miles that claimant was driving and the compensation he received from work, the testimony of the employer's witness about the possible causes for it were persuasive and claimant did not rebut them. Audio at ~33:00. Claimant did not present evidence showing that the employer singled him out for a reduction in his compensated miles or that the reduction was other than a result of neutral conditions affecting the employer's business. As discussed above, claimant also did not show that the reduction left him with gravely inadequate income or that, had he met with the manager, he would not have raised his income to level that he did not consider inadequate. On this record, claimant did not show that the reduction in miles for which he was compensated between April and July 2015 was a grave reason to leave work.

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

DECISION: Hearing Decision 15-UI-46710 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: December 23, 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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