

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1501

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 18, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 155134). Claimant filed a timely request for hearing. On December 12, 2015, ALJ Seideman conducted a hearing at which the employer failed to appear and issued Hearing Decision 15-UI-49182, affirming the Department's decision. On December 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Harris Soup Co., Inc. employed claimant as a maintenance technician from October 15, 2006 until September 18, 2015.

(2) Although claimant was usually scheduled to work day shifts, he often worked overtime when problems with machinery arose in the workplace. On September 16, 2015, claimant worked overtime, past the scheduled end of his shift, to repair a piece of equipment when a second piece of equipment, a compressor, malfunctioned. Claimant was working on the first piece of equipment with a coworker, another maintenance technician. The coworker had recently been hired; claimant was not acquainted with him and had no prior interactions with him. While claimant was working on the equipment, the coworker unexpectedly left and went elsewhere.

(3) On September 16, 2015, sometime after approximately 4:00 p.m., the coworker returned to the piece of equipment that claimant was still working on. Upon his return, the coworker laughed in claimant's face and commented, "You're still working on this [machine]?" Audio at ~18:15. Claimant responded that he was and asked the coworker where he had gone and asked if the coworker had been watching the supervisor turn the compressor off and on. Very abruptly the coworker "lost it," became very angry, and started making statements to claimant such as, "None of these guys in the shop like you. You should get the hell out of here." Audio at ~8:25, ~14:25. The coworker then started making "vulgar accusations" against claimant. Audio at ~8:30. The coworker proceeded to comment to claimant, "You know what?"

You may be king of the hill in this building, but I'm gonna catch your ass somewhere alone or I'm gonna find out where you live and I'm gonna beat the shit out of you." Audio at 8:35. The coworker then said he was good friends with a person who worked with the employer and had access to claimant's home address. Audio at ~ 13:14. Claimant responded by asking the coworker if was threatening him. The coworker told claimant, "You can call it whatever you want." Audio at ~8:50. Claimant left his work area to speak with the supervisor about the coworker. Not having had any previous dealings with the coworker and thinking the coworker's response was inappropriate, claimant was fearful that the coworker might follow through on his threat. Claimant spoke with his supervisor, described the coworker's behavior and told the supervisor that the coworker had "scared the crap out of me." Audio at ~11:54. Claimant told the supervisor he was going home after he completed the needed work on the equipment. Claimant clocked out of the workplace at 5:18 p.m.

(4) On September 17, 2015, claimant reported for work. Claimant was unsettled when the coworker also reported for work and the coworker gave him a "cheesy grin" as he clocked in. Audio at ~15:20, ~20:00. Claimant interpreted the coworker's behavior as intended to let him know the coworker meant for him to take his threat from the day before seriously. Claimant was unnerved at the coworker's behavior toward him, which he interpreted as "cagey." Audio at 15:00. Claimant's supervisor came up and told both claimant and the coworker that he wanted them to write up statements about their interaction on September 16, 2015. Claimant and the coworker wrote their statements alone together in a room. During this time, the coworker commented to claimant, "Just remember what I said [yesterday]." Audio at ~16:35. After claimant completed his statement, he gave it to the supervisor and told the supervisor he was going home because he was very uneasy around the coworker and feared for his safety. Claimant also told his supervisor that the employer needed to take steps to eliminate the threat from the coworker, stating "You guys are gonna need to figure this out because this [being on the work premises with the coworker] isn't going to work for me, like at all." Audio at ~16:50.

(5) On the evening of September 17, 2015, claimant's supervisor sent him a text message, stating that "the fault was with [the coworker] and the threat" and that the employer was going to move the coworker to the swing shift. Audio at ~12:26. Claimant replied by text stating that the employer's resolution was insufficient because he often worked overtime, into swing shift hours, and assigning the coworker to the swing shift would mean that the coworker would, at times, be on the premises when claimant was working. At this time, claimant was concerned and uneasy about the coworker's threat because did not know what the coworker was "going to do or what he was capable of doing." Audio at ~11:54.

(6) On September 18, 2015, claimant submitted a resignation letter to the employer stating that he was quitting work immediately because "I can't work like this [where he would be on the work premises when the coworker was also on them]." Audio at ~12:40. Claimant did not see any other way to remove the threat. On September 18, 2015, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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.

In Hearing Decision 15-UI-49182, the ALJ concluded that claimant did not have good cause for leaving work when he did. The ALJ reasoned that, because the employer had moved the coworker who threatened claimant to a different shift claimant “shouldn’t have problems with contact with [the coworker],” claimant’s quitting work “didn’t prevent [the coworker] from tracking down his home address” and claimant “could have taken some additional time to assess the situation,” claimant did not show that grave circumstances motivated him to leave work. We disagree with the inferences the ALJ drew from the facts and with his ultimate conclusion.

The ALJ’s first reason for concluding claimant did not show a grave reason for quitting work was contrary to the testimony at hearing. Claimant’s testimony was that he very often worked overtime, into the swing shift hours that the coworker was going to be moved into. Audio at ~11:30, ~11:51. Despite the ALJ’s statement, the record does not show that moving the coworker to the swing shift would eliminate work related contact between claimant and the coworker who had threatened him. The ALJ’s second reason is not dispositive. Quitting would not remove the possibility that the coworker might discover claimant’s home address and assault him outside of the workplace, but the issue is not whether the coworker had alternatives to carrying through his threat in the workplace. Instead, the issue is whether claimant reasonably perceived that continued encounters with the coworker in the workplace was a grave circumstance that threatened him with harm if the employer did not or was or could not take steps to eliminate those encounters. Given claimant’s undisputed testimony, it most reasonably appears that claimant was objectively concerned about his physical safety both inside and outside of the workplace. For this reason, it was a grave circumstance when the employer did not take effective action to avoid future workplace interactions between claimant and the coworker. The ALJ’s final reason for concluding that claimant did not show a grave reason for quitting work, that he could have taken additional time to assess the situation, would be a reasonable alternative only if there was a likelihood that this additional time would have changed the circumstances, either that claimant would have decided his safety was not in jeopardy or the employer would have taken steps in addition to re-assigning the coworker to the swing shift. On these facts, it does not appear that additional time would have changed the circumstances with which claimant was confronted.

Since the employer did not appear at the hearing, claimant’s testimony was un rebutted that a new coworker with whom he was not acquainted inexplicably and without provocation unleashed an apparently serious threat to his physical safety. Claimant’s concern about his safety if he had to work with the coworker in the future was reasonable and understandable since over the next two days the coworker did not relent in the seriousness of the threat, appeared to repeat it, did not express any remorse for making it and did nothing to diminish its impact on claimant. When the employer did not take reasonable steps to assure claimant that he would not again come into contact with the coworker in the workplace, it is highly unlikely that claimant would have decided to remain working when it remained reasonably likely that, at some future time, he would be working on the work premises at the same time as the coworker. As well, claimant reasonably assumed from his September 17 communication with his supervisor, in which he protested the assignment of the coworker to the swing

shift, that the supervisor was unwilling to completely address claimant's safety concerns by ensuring that claimant would never again work with the coworker. On these facts, given the reasonableness of claimant's concern for his physical well-being if he worked around the coworker in the future, a reasonable and prudent employee, exercising ordinary common sense, would have left work rather than working if there remained a reasonable likelihood that he was going to be required to work at the same time as the coworker worked.

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

DECISION: Hearing Decision 15-UI-49182 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 14, 2016

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.