

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0162

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 104647). Claimant filed a timely request for hearing. On February 4, 2016, ALJ Francis conducted a hearing, and on February 10, 2016 issued Hearing Decision 16-UI-52690, affirming the Department's decision. On February 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Robbins Farm Equipment, Inc. employed claimant as a service technician from January 23, 2006 to November 30, 2015.

(2) On November 23, 2015, claimant asked the shop foreman to give him more authority over the shop area. The foreman said no. Claimant then asked the employer's owner for more authority over the shop area. The owner asked why, and claimant said it was because the employees did not have respect for him or listen to him, and wasted work time. The owner talked with claimant about claimant's use of the shop phone and other behaviors. Claimant complained, for the first time, that his coworkers harassed him by joking about his hair style. The owner talked with claimant about how he could improve relationships with his coworkers, and promised to look into his complaints, but denied claimant's request for more authority. Their meeting ended at approximately 9:30 a.m.

(3) After the meeting, claimant asked the shop secretary how much vacation time he had available; he then told the secretary and shop foreman that he was leaving work at 12:00 p.m. and would not return until November 30, 2015. Claimant did not ask permission to take time off work and did not use the employer's procedures for requesting leave. At approximately 1:00 p.m., the owner learned that claimant had left the workplace.

(4) On November 25, 2015, claimant went to the workplace to pick up a draw check but none was available for him. The owner, foreman, and a manager-in-training met with claimant. The owner discussed claimant's failure to request time off work or use the employer's leave request procedures.

The owner also told claimant that his coworkers had reported that he was "moody" and "short" with them and that he greeted one by saying "good morning, shithead." Audio recording at ~13:25, 13:55. Claimant said coworkers were lying, but agreed that he was sometimes moody and short because of medications he took. He did not deny that he called one coworker a "shithead," and agreed it was "probably not" fair to say that his coworkers were harassing him when he was being moody and short-tempered with them. Audio recording at ~13:40.

(5) The owner told claimant to take the long weekend to think about his job and whether he wanted to continue working for the employer. The owner said he would think about it as well. The owner asked claimant to turn in his keys, gas card and the company phone, and to meet with him on November 30, 2015 to discuss claimant's future with the company and a plan to move forward. The owner did not tell claimant he was discharged or terminated.

(6) On November 30, 2015, claimant called the service manager at approximately 7:30 a.m. Claimant told the service manager that he had been "released" on November 25th. Audio recording at ~15:00. Claimant said that it made him mad when the owner took his keys, gas card and phone and that claimant thought he was "done." Audio recording at ~15:10.

(7) The owner subsequently met with claimant and other managers. The owner told claimant that he had been instructed to return to work on November 30 with a plan for the future, and was never told he was released or terminated. The owner asked claimant if he wanted to continue working. After some conversation, claimant commented that it was "obvious" that they "were getting nowhere" and were "done." Audio recording at ~9:05; ~15:55. The owner agreed, and said he would prepare claimant's final paycheck. Audio recording at ~37:31. Claimant then said they were "done" and left the office. Claimant never said that he wanted to keep his job or continue working for the employer. He did not return to work thereafter.

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

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) (August 3, 2011). 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. OAR 471-030-0038(2)(b).

Claimant argued that the employer discharged him. However, the employer never notified claimant that he was discharged or was not allowed to continue working. On November 24th, the owner specifically said that the employer wanted to meet with claimant on November 30, 2015 to plan claimant's future with the employer. On November 30, the owner told claimant he had not been "released" or terminated and asked claimant if he wanted to continue working. Claimant did not respond that he wanted to continue, and was the first party to indicate that his employment had ended by saying that he was "done." The owner's agreement with claimant's statement that they were not "getting anywhere" does not mean that continuing work was not available for claimant until claimant acted to end his employment. The preponderance of the evidence therefore shows that claimant could have continued to work for the employer for an additional period of time, but chose not to do so. The work separation is therefore a voluntary leaving.

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). 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 he mistakenly believed the employer had discharged him. However, claimant's belief was not reasonable under the circumstances. The employer never informed claimant he was discharged or terminated. Although the employer asked claimant to return his keys, phone and gas card, at the same time the manager requested these items, he specifically told claimant that he wanted claimant to think about his future with the employer and meet with managers on November 30 for a discussion. No reasonable and prudent person would conclude on the basis of that conversation that the employer had ended the employment relationship. If claimant was confused about his employment status at that point, claimant had the reasonable alternative to clarify the owner's intent or ask the owner to explain what his employment status was before quitting work based on an unreasonably mistaken assumption that he had been discharged. Claimant did not show that he had good cause to quit work based on his mistaken assumption that he was discharged. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation until he has requalified by earning four times his weekly benefit amount in subject employment.

DECISION: Hearing Decision 16-UI-52690 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, not participating.

DATE of Service: March 3, 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.

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