

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0179

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 112742). Claimant filed a timely request for hearing. On January 19, 2016, ALJ Allen conducted a hearing, and on January 25, 2016, issued Hearing Decision 16-UI-51607, affirming the administrative decision. On February 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) New Stage Collision employed claimant as an auto body technician from February 23 until September 30, 2015. Claimant's job duties included taking cars apart, repairing them, and reassembling them after they were repaired. Claimant normally worked Monday through Friday, from 8 a.m. to 5 p.m.

(2) On Sunday, September 27, 2015, claimant's father suffered a stroke. Claimant took his father to the hospital and sent the employer's owner a text message, stating that he would not be coming to work on September 28. The owner responded with a text message in which he asked claimant to let him (the owner) know "what's going on." Audio Recording at 10:35.

(3) On September 28, 2015, claimant's father remained in the hospital. Claimant sent the owner a text explaining that his father was still in the hospital, and that he would be unable to work for a few days. The owner responded with a text message in which he asked claimant to call him. Claimant spoke to the owner on the evening of September 28; the owner told claimant he was concerned about three cars that claimant needed to reassemble. Claimant was upset by this phone call because he was worried about his father's condition and believed that the owner was worried more about his business than the condition of claimant's father. Claimant did not believe that reassembly of the three cars was an urgent matter.

(4) On September 30, 2016, at 7:50 a.m., the owner sent claimant a text, asking if claimant was going to report for work on that date. Claimant responded with the following text: "What do you need?" Audio Recording at 14:50. Later that morning, claimant went to the workplace and completed work on one of the cars the employer expected him to assemble. Claimant was unable to finish work on the other cars,

however, because they had not been painted. Claimant called and sent text messages to the owner, but the owner did not respond. Claimant was irritated and upset by the employer's lack of response.

(5) Also on September 30, 2015, claimant's father was released from the hospital, but restricted from driving for at least a week.

(6) On October 1, 2015, claimant sent the owner a text telling the owner that he would not be coming to work on that day, and indicating he was upset by the owner's failure to respond to him. The owner did not respond to this text message. Claimant then sent the owner another text message in which he quit his job. Claimant voluntarily left work for the employer because he was angry and upset about owner's failure to respond to his phone calls and text messages. Audio Recording at 21:41.

(7) On October 2, 2015, the doctor released claimant's father to drive.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that 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.

From September 27 through September 30, 2015, claimant was unable to report for his regular work shifts because he needed to care for his father, who was hospitalized after suffering a stroke. Claimant quit his job because he was angry about the failure of the employer's owner to respond to his September 30 and October 1 phone calls and text messages regarding his situation and ability to report for work. While the owner's inability or unwillingness to communicate with claimant was understandably upsetting to claimant, who was worried about his father's health condition, it did not create a situation so grave that it left claimant no alternative but to quit his job. Claimant was apparently available for work on October 1; he could have reported for work on that day and attempted to complete work the employer expected him to perform. Rather than sending the employer text messages that never clearly indicated when claimant would be able to report for work, claimant could have requested a period of leave from the owner. A reasonable and prudent person, exercising ordinary common sense, would have pursued the reasonable alternatives of reporting to work or requesting leave before quitting his job.

Claimant failed to demonstrate good cause for voluntarily leaving work. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-51607 is affirmed.

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

DATE of Service: March 2, 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.