

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0271**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 92742). Claimant filed a timely request for hearing. On March 3, 2016, ALJ M. Davis conducted a hearing, and issued Hearing Decision 16-UI-54318, affirming the administrative decision. On March 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).<sup>1</sup>

**FINDINGS OF FACT:** (1) Schneider, the employer, employed claimant as a company driver from September 21 through 28, 2015. At the time claimant worked for Schneider, he had been laid off from his position as a truck driver with Sherman Brothers, but had been given no definite date when he was expected to return to work.

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<sup>1</sup> In his written argument, claimant complained that "I did not appreciate [the ALJ's] statement about me not exercising common sense...Your [sic] are very unprofessional..." In Hearing Decision 16UI-54318, the ALJ determined that claimant did not have "good cause" to leave work. "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) (emphasis added). The ALJ's use of the phrase "common sense" resulted from her application of the appropriate legal standard and was not a personal attack against claimant. In regard to claimant's complaint about the ALJ's conduct of the hearing, our review of the entire hearing record shows that the ALJ treated all parties respectfully, and gave them reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). We therefore find nothing "unprofessional" about the ALJ's behavior.

(2) From September 21 through 24, 2015, claimant attended an orientation session with the employer for which he was paid. He was told that his work as a driver for the employer would begin once the employer received information regarding claimant's medical condition.

(3) On September 28, 2015, the employer's account service manager contacted claimant and told him that based on the information received about claimant's medical condition, claimant could begin work as a driver on September 29. Claimant told the manager he would not accept a job as a driver for the employer because he wanted to return to work for Sherman Brothers. Claimant also did not want to work for the employer because he believed he was not physically able to perform the duties of the driver position.

**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 work separation is considered a voluntary leaving if an employee could have continued to work for the employer for an additional period of time. OAR 471-030-0038(2). 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).

Claimant asserted that he did not voluntarily leave work for the employer because he never worked for the employer, contending that his participation in the employer's orientation was not work. "Work" means "the continuing relationship between an employer and an employee," however. OAR 471-030-0038(1)(a) (August 3, 2011). Work is therefore not defined by the type of job duties an individual performs for an employer. Claimant's relationship with the employer began when he attended an orientation session, continued while the employer obtained information about claimant's medical condition, and ended only when claimant told the employer he would not accept a position as a driver. Claimant therefore performed "work" for the employer, and voluntarily left that work when he chose not to accept the continuing work the employer offered him.

To the extent that claimant quit his job for the employer because he wanted to return to work for his former employer, Sherman Brothers, claimant failed to demonstrate that he had good cause for leaving. An individual who leaves work to accept another offer of employment has good cause for leaving only if the offer of other work is definite, and is scheduled to begin in the shortest length of time "as can be deemed reasonable under the individual circumstances." OAR 471-030-0038(5)(a). At the time he left work for the employer, claimant had been laid off by Sherman Brothers and had not been given any specific date on which he was expected to return to work. Claimant therefore failed to meet his burden to show that his desire to return to work for Sherman Brothers constituted good cause for leaving his job.

with the employer, since he provided no evidence of any offer of work that was definite and scheduled to begin in the shortest length of time that was reasonable.

To the extent that claimant quit his job for the employer because he believed he could not physically perform the duties of the position, he failed to demonstrate good cause for quitting. We note that the job the employer assigned claimant was that of a driver. Claimant's ability and desire to work as a truck driver for Sherman Brothers suggests that he was physically able to perform similar work for the employer. Although claimant testified that he had determined, based on what other drivers told him at orientation, that he was physically unable to do the job of company driver for the employer,<sup>2</sup> he provided no testimony or other proof of the specific tasks the employer wanted him to perform as a driver, and provided no testimony or proof of any specific medical condition or disability that impaired his ability to perform these tasks. Claimant therefore failed to meet his burden to show that he quit his job because he was physically unable to do the work the employer expected of him.

Claimant voluntarily left work for the employer without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 16-UI-54318 is affirmed.

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

**DATE of Service:** April 5, 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](http://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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<sup>2</sup> Audio Recording at 16:58.