

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0286

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133034). Claimant filed a timely request for hearing. On March 3, 2016, ALJ Menegat conducted a hearing, and on March 4, 2016 issued Hearing Decision 16-UI-54429, affirming the Department's decision. On March 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not offered into evidence during the hearing. Claimant did not explain why he did not present this information at the hearing or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond his reasonable control prevented him from doing so. For this reason, EAB did not consider the new information that claimant sought to present. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) 1 800 Flowers Team Services, Inc. employed claimant from August 24, 2014 until December 23, 2015, last as a supervisor of its outside pack and seasonal storage facility located in Joplin, Missouri. At this facility, the employer processed and stored fruit.

(2) Sometime before December 23, 2015, the employer re-hired a married couple who had previously worked for it before retiring. The husband became claimant's immediate supervisor and the wife was assigned duties similar to those of claimant, although she did not report to her husband but to her husband's supervisor due to nepotism concerns.

(3) After the couple was re-hired, claimant thought they planned to stay for a few years before retiring again. The couple was familiar with the employer's operations and was well-liked by claimant's coworkers and the employer's management. Claimant thought he was being "pushed out" as a result of the re-hiring of the married couple. Audio at ~ 8:56. Claimant thought that in the future he was going

to have fewer work duties due to the hiring of the wife and fewer opportunities to gain relevant work experience.

(4) In December 2015, claimant decided to leave work because he concluded that his work prospects would be better with a new employer. Claimant did not discuss his concerns with the employer's human resources department because the pack and storage facility was busy processing fruit for the holiday season. Claimant did not discuss his concerns with his immediate supervisor because that supervisor was the husband and he was not comfortable doing so. Claimant did not discuss his concerns with any members of management because the husband and wife were friendly with management.

(5) Sometime between approximately December 1 and December 20, 2015, claimant decided he would return to his home in the Seattle Washington area when he left work. Claimant looked for work in Seattle while he was still in Joplin and, although he had a couple of phone interviews, no jobs were offered to him. Claimant decided he wanted to leave work before January 1, 2016 to allow him to tie up loose ends before the start of 2016.

(6) On approximately December 20, 2015, claimant notified his supervisor he was leaving work for "personal reasons." Audio at ~18:02. Claimant agreed to remain working until December 23, 2015. On December 23, 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.

Claimant decided to leave work based on vague concerns that he was being "pushed out" by the hiring of a retired couple who planned to work for a couple of years before retiring again. Audio at ~9:48. Aside from his subjective speculations, claimant did not present any evidence from which it can be inferred that this was likely the employer's intention. Nor did claimant present evidence that anything about the behavior of the married couple, or the employer's behavior after the couple was re-hired caused objective harm to him (financial, emotional or otherwise) or gave rise to objectively grave circumstances that compelled him to leave work. As well, although claimant could have clarified the viability of his job prospects with the employer after the re-hiring of the married couple, he chose not to do so before electing to quit work based on his amorphous concerns. A reasonable and prudent person in claimant's circumstances would not have concluded he had grave reasons to leave work and, even if he was persuaded that his concerns could possibly be legitimate, would not have decided to leave before clarifying his future job prospects with the employer. Claimant therefore failed to establish good cause for leaving work when he did.

We therefore conclude that claimant quit work without good cause, and that he is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-54429 is affirmed.

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

DATE of Service: April 20, 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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