

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0368**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113618). Claimant filed a timely request for hearing. On March 21, 2016, ALJ Vincent conducted a hearing at which the employer did not appear, and on March 29, 2016 issued Hearing Decision 16-UI-56013, affirming the Department's decision. On April 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant filed an application for review in which he included the comment that the employer did not appear at the hearing, by which EAB infers he thought he should have prevailed by default. However, it was claimant who filed the request for a hearing on the Department's administrative decision, and he had the burden to demonstrate that he was not disqualified from benefits based on this work separation. *See McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). That the employer failed to appear at hearing did not relieve claimant of this obligation, and it did not establish claimant's entitlement to benefits.

**FINDINGS OF FACT:** (1) Brighton Ford, Inc. employed claimant in its parts department from March 9, 2015 until November 13, 2015. The workplace was located in Colorado.

(2) During claimant's employment, the employer was extensively renovating the car dealership at which claimant worked. The renovation inconvenienced the employees of the parts department who remained stationed in the dealership during this work, including claimant. The dealership was not ventilated during the renovation and claimant and the other employees were exposed to dust and paint and gasoline and diesel fumes. The employer brought in a swamp cooler to air condition the dealership during the renovation and the cooler leaked water on the floor when electrical work was being performed. Claimant thought the conditions in the workplace during the renovation were not safe or satisfactory.

(3) Claimant usually worked from 8:00 a.m. until 6:00 or 6:30 p.m. Throughout his employment, claimant was not given an opportunity to take rest breaks and often was not able to take a lunch break. At times when claimant needed to briefly cease working to attend to personal business, he was criticized

for taking time away from work. Several times, claimant pointed out to the employee who informally functioned as the assistant manager of the parts department that he was entitled to take rest breaks and needed them. That employee told claimant, “We don’t take breaks here.” Audio at ~14:18. Claimant also spoke to the manager of the parts department about the lack of rest breaks. The manager told claimant, “We don’t have time to take breaks,” the inability to take breaks “comes with the business,” and “you have to roll with it.” Audio at ~ 15:00.

(4) On approximately October 31, 2015, claimant discussed with the manager of the parts department his employment-related concerns, including the lack of breaks. The parts manager did not suggest he would take any action in response claimant’s concerns. That day, claimant told the parts manager he was going to quit work in two weeks, or on November 13, 2015. Claimant decided to quit, in part, because he was not permitted to take rest breaks.

(5) On November 13, 2015, claimant voluntary 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 16-UI-56013, the ALJ concluded claimant left work without good cause. Without stating why, the ALJ reasoned that claimant’s concerns over the remodeling of the dealership and the employer’s failure to allow him to take breaks were not such that a reasonable and prudent person would have left work when he did. Hearing Decision 16-UI-56013 at 2. We disagree.

We agree with the ALJ that claimant did not demonstrate that the inconvenience from the remodeling or its possible health consequences were grave reasons to leave work. However, claimant’s un rebutted testimony, the only evidence in the record on the issue, demonstrated that the employer was subjecting claimant to unlawful working conditions by refusing to allow him to take rest breaks. Colorado Minimum Wage Order 32, 7 CCR 1103-1 §8 (December 30, 2014) states that an employer shall authorize and permit ten minute rest breaks for each four hours worked or major fraction thereof. See [https://www.colorado.gov/pacific/sites/default/files/7CCR1103-1\\_Minimum\\_Wage\\_Order\\_332.pdf](https://www.colorado.gov/pacific/sites/default/files/7CCR1103-1_Minimum_Wage_Order_332.pdf). Based on the ten to ten and a half hours that claimant was working each day, the employer was required to allow him to take two rest breaks (if he worked between eight and ten hours) or three rest breaks (if he worked more than ten hours). Based on claimant’s description that he rarely, if ever, was allowed to take breaks, the employer was not following Colorado employment law.

Relying on *J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998), EAB has consistently held that a claimant has good cause to leave work when he is subject to an

employer's unlawful practices on an ongoing basis, and should not be required to continue working for any indefinite period of time while he seeks to resolve the unlawful practice with the employer. *See e.g. Appeals Board Decision, 2015-EAB-1244, November 13, 2005* (employer's failure to comply with laws requiring meal and rest breaks was good cause to leave work); *Appeals Board Decision, 12-AB-0380, February 8, 2012* (employer making unlawful wage deductions was good cause to leave work). As the evidence exists in the record, the employer was engaging in unlawful behavior on an ongoing basis in the workplace. Claimant sought to remedy the employer's continued violation of the law by speaking with the assistant manager and the manager, but he was rebuffed. We disagree with the ALJ and conclude that a reasonable and prudent person would not have remained working and subjected himself to the employer's continued unlawful employment practices, but would have left work when claimant did.

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

**DECISION:** Hearing Decision 16-UI-56013 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service:** May 6, 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>1</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.