

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0408

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 4, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90625). Claimant filed a timely request for hearing. On March 30, 2016, ALJ M. Davis conducted a hearing at which the employer did not appear, and on April 5, 2016 issued Hearing Decision 16-UI-56511 affirming the Department's decision. On April 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Maaco Collision Repair & Auto Paint employed claimant from January 14, 2016 until January 28, 2016. Claimant performed general labor, including sanding, sweeping and detailing cars.

(2) Before January 28, 2016, claimant did not perceive any significant problems in the workplace. On January 28, 2016, claimant and three other employees prepared to move a vehicle canopy from the paint booth. At that time, the paint on the canopy had just been applied and was still wet. The canopy was resting on a wood frame. As claimant bent to begin to lift the wood, a coworker pushed him away from the canopy, thinking that he intended to touch the newly-painted canopy rather than moving the canopy by lifting the wood on which it was resting. Claimant told the coworker he was not going to touch the canopy. As claimant and the three employees prepared a second time to move the canopy, claimant bent down to lift the wood on which the canopy was resting. The same coworker pushed claimant away from the canopy again, apparently thinking claimant's shirt might brush against the still wet canopy and disturb the newly applied paint. Claimant told the coworker to stop pushing him because he was not going to touch the canopy.

(3) Later in the day on January 28, 2016, claimant was sanding a car. The same coworker who pushed him away from the canopy "nudged" or pushed claimant away from that car as he removed a windshield wiper from it. Audio at ~10:17. Claimant quickly left the area and spoke to the owner about the coworker's behavior in shoving or making physical contact with him three times that day. Claimant told the owner he was unable to continue working in a place where he was "pushed around." Audio at ~10:46. The owner told claimant that he was prepared to go up to the coworker in claimant's company

to discuss “what was going on.” Audio at ~11:05. Claimant refused, saying he was not “comfortable” speaking with the coworker and did not intend the stay working in an environment of “workplace violence.” Audio at ~11:24.

(4) On January 28, 2016, claimant voluntarily left work and thereafter did not return.

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.

While claimant testified he became “scared” of the coworker who pushed him three times on January 28, 2016, claimant did not contend that the coworker habitually dealt with him or other employees by physical means or had a history of physical altercations in the workplace. Claimant also did not provide further detail of the coworker’s behavior other than to state he “pushed” or “nudged” him, which does not amount to “workplace violence,” particularly when the coworker was apparently concerned that unless he acted quickly claimant might ruin a new paint job and claimant’s testimony, was unclear whether the coworker’s “nudge” of him to obtain access to the windshield wiper was other than an accidental and unintended physical contact. Audio at ~9:13, ~9:38. ~10:17. Claimant did not meet his burden to show that the manner in which the coworker had physical contact with him, viewed alone and without a history of other physical acts, was a grave reason to leave work. As well, claimant did not present evidence sufficient to establish that the owner, who offered to meet with claimant and the coworker to discuss what had happened in the workplace, was not sincere in this offer or that it was unlikely that an attempted remediation would be unsuccessful, and that it therefore would be futile to pursue it. The record therefore fails to show that no reasonable and prudent person would have quit work without allowing the owner an opportunity to adequately address the coworker’s behavior.

Claimant therefore failed to establish good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-56511 is affirmed.

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

DATE of Service: May 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. 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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