

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0479**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144714). Claimant filed a timely request for hearing. On April 18, 2016, ALJ M. Davis conducted a hearing, and on April 19, 2016 issued Hearing Decision 16-UI-57588, affirming the Department's decision. On April 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Rogue Truck Body, LLC employed claimant from August 15, 2014 to January 22, 2016 as a general laborer in its purchasing, shipping and receiving departments.

(2) Claimant had worked primarily with one supervisor since before December 2015, and considered that supervisor's demeanor to be "scary" and "intimidating." Audio Record 7:43 to 7:53. He believed the employer allowed the supervisor to behave in that manner at work without repercussions because the supervisor was the owner's son-in-law. In late 2015, the supervisor told claimant that he had once "beat an employee up" in the parking lot of the owner's business in California because the employee would not follow the supervisor's direction. Audio Record at 6:48 to 6:59. The owner disciplined the supervisor for the assault by demoting him to a different department and position for one year.

(3) On December 11, 2015, claimant was injured at work. Claimant was released to perform light duty work.

(4) On January 8, 2016, claimant spoke with the employer's general manager about his work restrictions and told him that he considered the work environment to be "hostile and unsafe." Audio Record at 8:48

to 8:52. The manager directed claimant to report to his supervisor for work operating a forklift. Claimant considered the forklift work to be within his light duty work restrictions.

(5) Claimant met with his supervisor who told claimant in a “scary” manner that he could not work on the forklift, and instead directed claimant to complete an inventory of the hydraulic room. Audio Record at 9:37 to 9:56. Claimant was dissatisfied with the work assignment because he believed the work in the hydraulic room would require heavy lifting, twisting, bending and climbing that was prohibited under his light duty work restrictions.

(6) Later on January 8, 2016, claimant’s supervisor told the general manager that claimant could not perform the forklift work because it required climbing, which violated claimant’s work restrictions. Claimant met with the general manager again and told him that he considered his supervisor to be acting in a hostile manner and that the hydraulic room assignment violated his work restrictions. The manager told claimant to request modified work restrictions from his doctor. Claimant left work because he had not been offered light duty work that met his work restrictions. The employer took no adverse action against claimant for having refused the work in the hydraulic room.

(7) On January 22, 2016, claimant returned to work with modified work restrictions. The general manager told claimant he would return to work with the same supervisor. Claimant told the manager he would not work with the supervisor, and quit.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude 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).

At hearing, claimant asserted that he felt scared and intimidated and “feared for his own safety” if the general manager put him back to work for the same supervisor he had before January 22. Audio Record at 11:29 to 11:30. However, the “good cause” standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that the situation was so grave that no reasonable and prudent person would have continued to work for his employer for an additional period of time. *Id.* The record does not show that it was objectively reasonable for claimant to quit work because continuing to work for the same supervisor would subject him to an unsafe work environment, either because the supervisor might harm him, or because claimant would be required to perform work outside his work restrictions.

Claimant’s supervisor behaved in a manner claimant found intimidating. However, the record does not show that the supervisor’s demeanor, viewed objectively, was a sufficient basis for claimant to fear for his safety. The record does not show the supervisor yelled at, threatened, or became physically aggressive with claimant or his current coworkers. Nor was the past incident when the supervisor assaulted an employee sufficient to show a present threat of harm to claimant. The prior incident was

toward another employee of a different business and occurred more than a year before claimant's resignation. Moreover, the supervisor was disciplined for that behavior, and there is no evidence in the record to show he repeated or threatened to repeat that conduct. In sum, the record does not show that the supervisor's behavior toward him was so egregious that a reasonable and prudent person would have no reasonable alternative but to quit work.

Claimant also feared that his supervisor would require him to perform work outside his work restrictions. The record does not support claimant's contention. The supervisor showed his intent to follow claimant's work restrictions when he told the general manager he did not permit claimant to operate the forklift because it required claimant to climb, which claimant was not permitted to do under his work restrictions. In addition, when claimant reported to the general manager that the January 8 work assignment in the hydraulic room also violated his work restrictions, the employer did not require claimant to perform that work and permitted claimant to leave work without adverse employment action. Nor did claimant know, before he quit, what his work assignment would be on January 22, or if it would have been outside his work limitations. Claimant could have waited to learn if his January 22 work assignment met his work restrictions, or asked his employer to offer him other work if it did not meet his restrictions. Absent a preponderance of evidence showing claimant would be required to perform unsafe work, claimant failed to establish circumstances of such gravity that he had no reasonable alternative but to quit work when he did.

Claimant failed to establish that she quit work with good cause, and therefore is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 16-UI-57588 is affirmed.

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

**DATE of Service:** May 31, 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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