

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

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0511

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 15, 2016, the Oregon Employment Department (the Department) served notice of the following two administrative decisions: decision # 90251 concluded that claimant voluntarily left work without good cause, and decision # 91132¹ concluded that claimant was ineligible for unemployment benefits for the week of January 3 through 9, 2016 because he had failed to provide information requested by the Department. On January 20, 2016, claimant filed requests for hearing on both decisions; the hearing requests were mailed to the Office of Administrative Hearings (OAH) in the same envelope. Also on January 20, 2016, the Department issued notice of an administrative decision (# 71037) which allowed claimant benefits for the week of January 3 through 9, 2016, but did not provide the number or a description of the January 15 decision it amended and cancelled.

On January 26, 2016, ALJ Seideman issued Hearing Decision 16-UI-51704 which dismissed claimant's request for hearing but did not specify which hearing request was being dismissed. On February 3, 2016, OAH issued notice of a hearing scheduled for February 11, 2016. The hearing notice stated that it was "regarding the Administrative Decision(s) dated January 15, 2016", and that the issue for the hearing would be: "[s]hall claimant be disqualified from the receipt of benefits because of a separation, discharge, suspension or voluntary leaving from work?" On February 11, 2016, ALJ M. Davis issued Hearing Decision 16-UI-52809, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On March 15, 2016, ALJ Kangas issued Hearing Decision 16-UI-55080, dismissing claimant's request to reopen. On March 19, 2016, claimant filed an application for review of Hearing Decision 16-UI-55080 with the Employment Appeals Board (EAB). On March 31, 2016, EAB issued Appeals Board Decision 2016-EAB-0317, allowing claimant's request to reopen the hearing on decision # 90251, the decision concerning claimant's work separation, and remanding the matter to OAH for a hearing on the merits of claimant's hearing request. On April 14,

¹ We take notice of this administrative decision, claimant's request for hearing, and the disposition of claimant's hearing request, which are facts contained in Department records. OAR 471-041-0090(3) (October 29, 2006). Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2002516). Unless such objection is received and sustained, the noticed facts will remain in the record.

2016, ALJ Vincent conducted a hearing in which the employer did not participate, and on April 22, 2016, issued Hearing Decision 16-UI-57929, concluding that claimant voluntarily left work without good cause.² On May 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Versante Pizza employed claimant as a kitchen worker and delivery driver from October 15 until November 29, 2015.

(2) On November 29, 2015, a coworker who served as acting manager, arrived at the employer's restaurant while claimant was working. The coworker was very intoxicated. When the coworker indicated that he wanted to leave the restaurant, claimant offered to give him a ride home, explaining that it would be convenient to do so because claimant was scheduled to deliver pizzas. The coworker became "irate" and angrily and falsely accused claimant of sleeping with the coworker's girlfriend. The coworker told claimant he was "going to bash in [claimant's] face," and began pushing and shoving claimant. Audio Recording at 5:37. Claimant unsuccessfully attempted to calm down the coworker, and eventually left the restaurant, intimidated by the coworker's behavior and fearing for his (claimant's) safety.

(3) On November 30, 2015, claimant sent the employer's manager a text in which he explained that the coworker had arrived drunk at the restaurant, and that claimant was resigning because he no longer felt comfortable working in an environment that was unsafe. Claimant believed it was necessary to resign because he thought that neither the manager nor owner would take any action against the coworker who had attacked him. Claimant's belief was based another coworker who continued to work for the employer, even after that coworker had arrived intoxicated at the employer's restaurant and created "problems." Audio Recording at 11:52.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that 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). A claimant is not, however, required to "sacrifice all other than economic objectives and *** endure *** personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits." *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979). 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 voluntarily left work for the employer after a coworker, who was serving as acting manager, falsely accused claimant of having an relationship with the coworker's girlfriend, threatened to "bash in

² Hearing Decision 16-UI-57929 incorrectly states the hearing was held on February 11, 2016.

[claimant's] face,” and physically assaulted claimant. Claimant reasonably feared for his personal safety as a result of this unprovoked abuse, and we conclude that the incident created a grave situation for claimant.

The ALJ, however, concluded that claimant “had the reasonable alternative of working with the employer to correct the work environment while he looked for other employment.” Hearing Decision 16-UI-57929 at 2. We disagree. Based on a previous occurrence – when the employer took no action against an employee who arrived intoxicated at work and created “problems” – claimant believed the employer would not or could not effectively restrain the coworker who attacked him. The reasonable nature of claimant’s belief was reinforced by the failure of his manager to offer to do anything about the coworker’s attack when claimant told the manager about the incident and also told the manager he was quitting. Finally, we conclude that enduring a potentially unsafe situation at work while looking for a new job was not a reasonable alternative for claimant. *See Campbell v. Employment Department*, 256 Or App 682, n2, 303 P3d 957 (2013) (noting that the court has repeatedly rejected the theory that a claimant is required to look for other work to establish good cause for quitting a job). We therefore conclude that a reasonable and prudent person, who experienced the type of attack that claimant did, would conclude he had no alternative but to voluntarily leave work.

Claimant voluntarily left work with good cause. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-57929 is set aside, as outlined above.

J.S. Cromwell and D. P. Hettle;
Susan Rossiter, 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. 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.