

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0521

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93712). Claimant filed a timely request for hearing. On April 19, 2016, ALJ Buckley conducted a hearing and issued Hearing Decision 16-UI-57634, affirming the Department's decision. On May 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon East Engineering, Inc. employed claimant as an accounting clerk to handle payroll and accounts payable and accounts receivable.

(2) The employer's business had three board members, and three other staff, including claimant. It did not have a designated human resources person.

(3) The employer's regular payday was the 15th day of each month. Due to regular cash flow problems, the employer sometimes failed to pay its employees on the employer's established payday. The employer paid its employees one to nine days late in February, March and December 2015, and January and February 2016. Exhibit 1.

(4) Each occasion that payroll was late, the staff, including the board president, became upset and complained to claimant. Claimant complained to the treasurer and vice president about how the president yelled at her when payroll was late although claimant felt she was not at fault for the late payments. Claimant did her best to facilitate timely payment from the employer's clients.

(5) On March 14, 2016, the employer's president approached her at work asking if payroll would be timely that month. Claimant could not assure him payroll would be timely because the employer had not yet received payment from one of its largest clients. The president was upset and began using foul language and yelling about the situation. The yelling was loud and escalated between claimant and the

president, and the president felt he “had to shout [claimant] down.” Audio Record at 36:33 to 36:37. Claimant felt “attacked and uncomfortable” and frustrated that the president would not let her explain what had occurred to delay payment. Audio Record at 11:58 to 12:18. Claimant worked for two hours, but could no longer tolerate the pressure at work and went home for the rest of the day.

(6) On March 15, 2016, claimant decided she could no longer work under the stressful conditions at work. She sent a text message to the board secretary stating she would no longer work for the employer.

CONCLUSIONS AND REASONS: We disagree with the Department and the ALJ and conclude that claimant quit work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

Claimant quit work because of the stressful working conditions that resulted when the employer’s payroll was late. In Hearing Decision 16-UI-57634, the ALJ concluded claimant quit work without good cause, reasoning that, “[w]hile the conduct of the [employer’s president] might have been unpleasant for claimant, nothing in the record indicates that his behavior on March 14, 2016 was so abusive or intolerable that it created a grave situation for claimant.”¹ We disagree.

An Oregon employer must establish and maintain a regular payday, and must pay all employees the wages due them on that day. ORS 652.120(1). The employer regularly failed to pay its employees in a timely manner, including during each month of claimant’s last three months of employment. Because claimant was the person responsible for accounts receivable/payable and payroll, the employees complained to her when they were not paid on time, including the employer’s president, who yelled and used foul language. Given the employer’s ongoing failure to pay wages on time, no reasonable and prudent employee responsible for payroll would have continued working for the employer. *Accord J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (claimant had good cause to leave work when wage dispute was ongoing); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where wage dispute is not ongoing, and only the issue of back pay restitution continues to exist, claimant did not have good cause to quit work). Claimant had already complained to the board members regarding the president’s behavior when payroll was late, and there is no evidence her complaints or any other action on claimant’s part would improve the employer’s cash flow problems.

The preponderance of the evidence shows that no reasonable and prudent person would have continued to work for her employer for an additional period of time. We therefore conclude that claimant quit

¹ Hearing Decision 16-UI-57634 at 2.

work with good cause. She is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-57634 is set aside, as outlined above.

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

DATE of Service: June 7, 2016

NOTE: 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.

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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