

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0615**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 115403). Claimant filed a timely request for hearing. On May 13, 2016, ALJ L. Lee conducted a hearing, and on May 16, 2016 issued Hearing Decision 16-UI-59670, affirming the Department's decision. On May 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Scofield Electric Co. employed claimant as a journeyman electrician from February 4, 2016 to February 9, 2016.

(2) Claimant had 16 years of experience as an electrician. She had previously suffered injury to her thumb and wrist while using a dull drill bit working for a different employer.

(3) During claimant's brief employment she observed a number of unsafe working conditions. Some of the tools the employer provided were in disrepair, including one that fell apart when she tried to use it. The drill bits the employer provided for her use were dull, and she feared that she would be reinjured using them. She was provided with folding ladders and believed other types of ladders were not available, and she was required to lean a folding ladder against a wall to use it in certain areas, a practice that was unsafe.

(4) On February 8, 2016, claimant complained to her union about the unsafe tools and folding ladder. The union advised claimant to notify the foreman of her concerns.

(5) Claimant spoke with the foreman about the unsafe tools and drill bits. When she asked the foreman for different tools, the foreman advised claimant that the tools provided were what the employer had. Claimant observed the foreman use the folding ladder in the same unsafe way she was expected to use it. Claimant did not know, and no one told her, that she could tag unsafe equipment or dull drill bits for repair or replacement, that the employer would sharpen or replace dull drill bits, or that the employer had extension ladders or scaffolding available for employees.

(6) On February 9, 2016, claimant concluded that the working conditions were too unsafe, and decided to leave work. She asked the employer to lay her off work and left in the middle of her shift. Before asking to be laid off and reassigned, claimant did not go to the foreman's managers with her complaints, and did not file a complaint about the employer with the state OSHA office.

**CONCLUSIONS AND REASONS:** We disagree with 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 P2d 722 (2010). Claimant must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

The ALJ concluded that claimant had "legitimate concerns about the inadequate quality of tools and the unsafe use of foldout ladders on the work site," and it "was the responsibility of the foreman to address claimant's concerns, but for some reason the foreman seemed indifferent." The ALJ found that she did not have good cause for leaving work, however, because "she should have taken her concerns up the chain of command," and, if she had, "might have learned that she had options."<sup>1</sup> The ALJ concluded that, because "she did not pursue, much less exhaust, all reasonable alternatives to quitting and becoming unemployed," she quit work without good cause.<sup>2</sup> Although we agree with the ALJ that claimant's concerns about the tools available to her on the job were legitimate, and conclude that, due to the potential for injury as a result of using unsafe tools, dull drill bits and unsafe or untethered ladders, claimant's concerns amounted to a grave situation, we disagree that there were reasonable alternatives.

On this record, claimant repeatedly complained about the tools and the drill bits to the foreman and complained to her union. She was only on the job four days, and the record fails to show that claimant knew or had reason to know what the "chain of command" was, much less that she should take her concerns "up" it if the foreman did not address them, particularly given that her union told her to talk to the foreman and did not advise other action. When she asked the foreman about the tools, however, he simply told her that the tools she was using was what the employer had. It was reasonable for her to

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<sup>1</sup> Hearing Decision 16-UI-59670 at 4.

<sup>2</sup> *Id.*

infer that the folding ladder she knew was available, and had seen the foreman use, was also what the employer had available. Given those circumstances, there is little in this record to indicate that she knew or reasonably should have known that other tools, drill bits or ladders were available to her. In addition, the foreman's failure to offer claimant any alternatives, such as a new drill, or sharper drill bits, or to advise her that the dull drill bits she was concerned about could be sharpened or replaced implicitly suggested to her that such alternatives were not available and that further attempts to address her concerns would be futile.<sup>3</sup> Under the circumstances, claimant did not know or have reason to know at the time that other alternatives were available, much less that exploring them might resolve her concerns. We therefore conclude that claimant voluntarily left work with good cause, and she is not disqualified from receiving unemployment insurance benefits based on her work separation.

**DECISION:** Hearing Decision 16-UI-59670 is set aside, as outlined above.<sup>4</sup>

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

**DATE of Service: June 24, 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>3</sup> *See accord Early v. Employment Dep't.*, 274 Or App 321, 360 P3d 725 (2015) (when an individual repeatedly tries to resolve issues of concern with the employer, and the employer does not offer any alternatives, thereby "implicitly suggesting that there was none," further attempts would reasonably appear to the individual to be futile).

<sup>4</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.