

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0675

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135403). Claimant filed a timely request for hearing. On May 16, 2016, ALJ Murdock conducted a hearing, and on May 19, 2016 issued Hearing Decision 16-UI-60003, affirming the Department's decision. On June 8, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lynn Herbert Sawmills LLC employed claimant from April 30, 2014 until March 4, 2016, last as an oiler.

(2) After claimant was working as an oiler, he had regular contact with the millwrights. On more than one occasion, claimant observed a particular millwright yelling, screaming and throwing tools when he disliked what his coworkers were doing. This millwright was the son of the employer's head millwright. When he was upset, this millwright would also tell his coworkers things like "get outta my face" and state that if they did not, they "might catch" a ball peen hammer, a screwdriver or a wrench. Transcript at 10, 11. When this millwright acted out, the only consequence was that his father, the head millwright, would tell him, "You need to shut your mouth." Transcript at 9, 10.

(3) On one occasion, claimant observed the millwright having a dispute with the day shift supervisor. The day shift supervisor told the millwright, we "need to take it out to the log yard," apparently implying the situation was devolving into a physical fight. Transcript at 11. At his time, the head millwright intervened to stop the argument. The employer's human resources department was called in to address the incident. Later, this millwright told claimant the human resources representative had only mentioned to him that he should "shut his mouth" when dealing with the supervisor and did not take any other actions to resolve the situation. Transcript at 9, 10.

(4) On March 4, 2016, toward the end of claimant's shift, the particular millwright approached claimant and told him that he was spending too much time helping the other millwrights when his job was limited to greasing and oiling, and claimant had "no right to help the millwrights." Transcript at 5. The

millwright told claimant he should call him if the other millwrights needed help. Claimant was irritated by the millwright and told the millwright that he was being arrogant. In response, the millwright began yelling at claimant and told claimant “you don’t want to get cocky with me,” “if you don’t shut your mouth, I’m gonna shut it for you,” “I’ll ruin [your] life” and “you don’t want any of this [to happen from me].” Transcript at 5, 6. Rather than continuing to interact with the millwright, claimant went to speak with the head millwright. Claimant was concerned that, if he remained, the millwright’s behavior would physically attack him.

(5) After claimant left the millwright, he found the head millwright in the shop. Claimant described his interaction with the millwright and told the head millwright he was not able to work with a person as volatile as that millwright. The head millwright told claimant that what he had experienced was not a reason to quit. At approximately this time, the millwright entered the shop, “slammed” down his tools on a table and started staring very noticeably at claimant. Claimant became irritated and told the millwright “you want everything [your way]” and “if you want the oiler job, you can have it.” Transcript at 7. The millwright began advancing on claimant while yelling criticisms about the way claimant performed his job. The head millwright interrupted the millwright and told him “to shut up. You’re being a punk kid.” Transcript at 7. At that time, claimant left the area and left his shift before it was over because he thought if he remained that the millwright’s behavior would escalate into a physical confrontation.

(6) After claimant left his shift, he called the head millwright and left a message apologizing for leaving his shift and stating that he wanted to discuss the interaction with the millwright. When the head millwright did not return his call within approximately one and a half hours, claimant concluded the head millwright did not want to deal with the situation and would not take steps to control the behavior of his son, the millwright. On March 4, 2016, claimant called the employer’s human resources office. The human resources representative with whom claimant spoke listened briefly to claimant describing his interaction with the millwright and told claimant that the head millwright had already contacted her and told what had happened. She said nothing further before she stopped speaking and both she and claimant remained on the phone in silence. The representative then told claimant she would have his final check ready for him to pick up. Claimant interpreted her silence followed by her comments on his final paycheck as indifference to his account of the interaction he had with the millwright. Claimant picked up his paycheck and did not return to the workplace.

(7) On March 4, 2016, claimant voluntarily left work.

CONCLUSIONS AND REASONS: 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 [she/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.

In Hearing Decision 16-UI-60003, the ALJ concluded claimant voluntarily left work without good cause. The ALJ reasoned that the only threat the millwright directed toward claimant that was “inherently violent” was that he would “shut claimant’s mouth for him” and that was not a “serious threat of violence” and did not give rise to a grave situation. Hearing Decision 16-UI-60003 at 2. The ALJ further reasoned that if claimant “truly felt threatened” he had the reasonable alternative of complaining about the millwright’s behavior to the employer or its human resources department before he quit work. Hearing Decision 16-UI-60003 at 2-3. We disagree.

At the outset, claimant was the only witness at hearing with first-hand knowledge of his March 4, 2016 interaction with the millwright. Although the employer’s witness testified she had spoken about the interaction with the head millwright, she did not provide the substance of that statement. As well, although the employer’s witness testified she was not aware of any prior complaints about the millwright screaming and yelling at other employees or slamming his tools down, she had no first-hand knowledge of the millwright’s behavior in the workplace or whether the head millwright had reported all inappropriate behaviors that his son, the millwright, might have engaged in. Transcript at 25. Claimant’s first-hand observations on these issues are entitled to more weight than the employer’s hearsay evidence or its lack of knowledge about the millwright’s behavior in the workplace. We accept claimant’s description of his March 4, 2016 interaction with the millwright and his descriptions of the millwright’s behavior before March 4, 2016.

While the ALJ determined that the millwright’s statements to claimant during the March 4, 2016 interactions were not “serious” threats, they were certainly not benign. Viewed against the backdrop of the millwright’s past behavior of slamming tools down in anger at people and screaming at and advancing on claimant while the head millwright did nothing to stop him, it was not unreasonable for claimant to conclude that at some point, through the employer’s inaction, the millwright’s behavior was likely to be allowed to escalate to physical confrontations. It was also not unreasonable for claimant to believe that the March 4, 2016 interaction could be the time when the millwright’s behavior would so escalate. The ALJ erred in her determination that what the millwright said and how he acted toward claimant on March 4, 2016 did not give rise to a grave situation.

While there were certain theoretical options available to claimant short of quitting work, on this record, claimant did not act unreasonably in failing to pursue them. First, although the head millwright and at least one supervisor knew about the millwright’s unpredictable and volatile behaviors, those behaviors had not improved over time. Second, if claimant’s account is accepted, it appears that the head millwright was protecting his son, the millwright, and had successfully misled the human resources department for some time about his son’s behaviors and workplace conduct. Given this, it was not unreasonable for claimant to conclude that the human resources department would not have the unbiased information needed to resolve the situation and pursuing recourse through it would be futile. The ALJ is correct that claimant had the hypothetical alternative of contacting the owner of the employer to rectify this situation, but claimant had already unsuccessfully sought the assistance of the head millwright and the millwright had already informed claimant that the human resources department had done essentially nothing to him when it received a complaint about him from a different supervisor. While claimant could conceivably have sought a meeting with the owner, by seeking the assistance of the head millwright and then learning that the human resources department had not taken effective action against the millwright based on another supervisor’s complaint, it was not unreasonable for claimant to

conclude that any other alternatives he pursued would likely not be effective given that the millwright's workplace behavior had been successfully covered up. A claimant is not required to exhaust all hypothetically available options, but only to pursue ones that are reasonable under the circumstances. On this record, it was not unreasonable for claimant not to contact the owner for redress.

Claimant showed good cause for leaving work when he did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-60003 is set aside, as outlined above.

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

DATE of Service: July 19, 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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