

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0729

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 151100). Claimant filed a timely request for hearing. On May 23, 2016, ALJ Vincent conducted a hearing, and on May 31, 2016 issued Hearing Decision 16-UI-60729, affirming the administrative decision. On June 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) All City Paving Stones employed claimant as a concrete finisher from April 24, 2015 until March 3, 2016.

(2) Claimant believed that the employer engaged in unsafe practices by failing to require that employees wear hard hats, by failing to provide traffic control devices when employees worked in areas where such devices were required by law, and by failing to make water available that was needed to safely cut concrete. Claimant repeatedly told his supervisor that it was unsafe to cut concrete without water, but was dissatisfied with the supervisor's response. Other than the lack of water available for concrete cutting, claimant did not talk to his supervisor about any other unsafe practices in which he believed the employer engaged. In addition, claimant never talked with the estimators who served as the employer's safety representatives about practices claimant believed to be unsafe.

(3) Sometime to March 3, 2016, the employer made a water tank available to claimant and his coworkers; the tank could be taken out to jobs and used when cutting concrete. Audio recording at 27:36.

(3) On March 3, 2016, claimant and coworkers met with the employer's owner at the employer's office before going out to the jobs scheduled for that day. The employer's owner asked claimant to purchase a filter for a tractor because on March 2, the tractor had become inoperable due to the need for a new filter. Claimant responded that he needed a company credit card to purchase the filter, and left the office. The employer's owner followed claimant out of the office and told him and other workers that "somebody get their ass to the fucking job and get the fucking filter back to me now." Audio recording

at 21:39. Claimant then quit his job because he was upset by the way the employer's owner had treated him, and worried about the unsafe practices in which he believed the employer engaged.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that 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). 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 testified that he voluntarily left work for the employer because of "safety issues": he believed that the employer failed to take adequate precautions to keep him and other workers safe on the job. Audio recording at 4:01. When the ALJ asked why he quit work when he did, however, claimant responded that he was upset by the way the employer's owner treated him on March 3. We therefore consider both safety concerns and the incident with the employer's owner as the reasons for claimant's decision to voluntarily leave work.

Claimant failed to demonstrate that at the time he quit his job, the employer was engaging in unsafe practices that created a grave situation for claimant and his coworkers. Although claimant testified that the owner did not require employees to wear hard hats, the employer's representative testified that the need to wear hard hats was emphasized at weekly Monday morning safety meetings. Audio recording at 24:08. Although claimant asserted that the employer did not put out traffic control devices when employees worked in areas where such signs were required, the employer's representative testified that the employer utilized these devices whenever the city or county required that the employer do so. Audio recording at 35:17. While the parties' testimony was in apparent conflict on the matters of hard hats and traffic control devices, there is no reason to doubt the credibility of either party. Where, as here, the evidence on disputed issues is evenly balanced, the uncertainty must be resolved against claimant since he carried the burden of persuasion in this voluntary quit case. We therefore conclude that claimant failed to demonstrate that the employer did not require employees to wear hard hats and did not utilize traffic control devices when required to do so.

In regard to the employer's refusal to provide water when necessary for safe concrete cutting, claimant initially testified that the employer provided no water. On cross examination, however, he admitted that water became available about the time he quit his job, but that he did not take it to the jobs to which he was assigned if he did not need it. Audio recording at 27:36. We therefore find that claimant did not show that he faced a grave situation on account of a lack of water made available for concrete cutting.

Even if claimant was dissatisfied with the employer's safety practices, he had the reasonable alternative of bringing his concerns to his supervisor or the employer's estimators, who served as safety representatives. A reasonable and prudent person who was worried about unsafe working conditions

would have attempted to bring these concerns to the attention of those responsible for workplace safety before concluding he had no alternative but to quit his job.

Claimant also failed to demonstrate that his interaction with the employer's owner created a grave situation for him. The owner's use of foul language in criticizing the failure of claimant and his coworkers to purchase a part that was needed to make one of the employer's machines operable was understandably upsetting and offensive to claimant. There is nothing in the record to suggest that the owner's outburst was anything other than a single, unfortunate incident. A reasonable and prudent person would not conclude that one angry encounter with a supervisor left him no alternative but to leave work.

Claimant voluntarily quit his job without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-60729 is affirmed.

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

DATE of Service: July 27, 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.

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