

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0811

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 95038). Claimant filed a timely request for hearing. On June 16, 2016, ALJ Vincent conducted a hearing, and on June 24, 2016, issued Hearing Decision 16-UI-62533, affirming the administrative decision. On July 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) Boise Cascade employed claimant as a core operator from 2001 until March 28, 2016.

(2) Claimant is a Jehovah's Witness. As part of the practice of his faith, he attends meetings held every Tuesday, from 7 to 9 p.m., and every Sunday, from 10 a.m. until approximately 12 p.m.

(3) From 2001 until September 2015, claimant worked the graveyard shift for the employer and had Friday and Saturday off. Audio recording at 6:43, 8:42. In September 2015, he agreed to work day shift on the condition that he would be permitted to have Sundays off. The employer agreed to allow claimant to have Sundays off.

(4) On February 11, 2016, after the employer laid off some employees, it changed claimant's work schedule so that he was no longer had Sunday as a day off. Audio recording at 6:43. Although claimant spoke to his line supervisor and another one of the employer's managers, he was told the schedule would not be changed and he would be required to work on Sundays. Audio recording at 10:10. Claimant then chose to return to graveyard shift, working from 11 p.m. until 7 a.m. Claimant hoped that this schedule would allow him to resume having Sundays off. The employer told claimant, however, that because he had volunteered to work the graveyard shift, Sundays were not available for him, and he would have to wait for Sunday to "open back up" as a possible day off. Audio recording at 12:47.

(5) After claimant began working the graveyard shift, he regularly got up at 6 or 7 p.m. on Saturday, worked from 11 p.m. Saturday until 7 a.m. Sunday, and then attended his scheduled meeting at 10 a.m. on Sunday. Claimant found it difficult to stay awake and alert during his Sunday meetings. Audio recording at 20:40.

(6) Claimant talked to his supervisors and asked to have his schedule changed, but was unsuccessful in obtaining Sundays off. Audio recording at 13:05. On March 28, 2016, claimant quit his job because the employer refused to allow him to take Sunday as a day off.

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 is a Jehovah’s Witness, and attends Sunday morning meetings as part of his faith practice. Claimant quit his job because the employer refused to allow him to have Sundays off. Claimant found that his work schedule – which required that he work from 11 p.m. Saturday until 7 a.m. Sunday – did not allow him to remain awake and alert during his 10 a.m. Sunday meetings. Claimant testified that he was awake for “nearly 20 hours” by the time he arrived at his Sunday meeting because he would get up at 6 or 7 p.m. on Saturday, work his 8 hour overnight shift, and then attend his Sunday morning meeting. Audio recording at 8:04, 20:40. While the graveyard shift claimant was required to work was undoubtedly inconvenient for him, he did not demonstrate that it constituted a grave situation when considered objectively. First, claimant failed to show that it was necessary that he get up at 6 or 7 p.m. on Saturday, and that he could not have slept longer, perhaps to 9 or 10 p.m. Nor did claimant show that three hours between the time his shift ended at 7 a.m. and his meeting began at 10 a.m. was an inadequate amount of time for him to sleep or rest before his Sunday meetings. Individuals commonly engage in activities after their work shifts end, *e.g.*, classes and meetings, and usually do so without taking an extended rest period before beginning after-work activities.

Absent such showings, claimant failed to establish that he had no reasonable alternative but to quit work. We therefore conclude that claimant quit work without good cause, and is disqualified from the receipt of unemployment benefits on the basis of his work separation from the employer.

DECISION: Hearing Decision 16-UI-62533 is affirmed.

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

DATE of Service: August 5, 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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