

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0829

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90230). Claimant filed a timely request for hearing. On June 30, 2016, ALJ Monroe conducted a hearing, and on July 7, 2016 issued Hearing Decision 16-UI-63349, affirming the Department's decision. On July 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Hart Bros Core Co. employed claimant as a sales representative from May 18, 2015 to March 28, 2016.

(2) The employer provided claimant with use of a company vehicle to commute from his residence in Springfield, Oregon to his work in Albany, Oregon. On March 21, 2016, the company vehicle claimant was using ran out of gas while he was operating it. The employer had to send two employees to assist claimant with refueling and retrieve the vehicle. Claimant's managers considered claimant at fault for running out of gas and were unhappy with the resources it took to resolve the situation. That day, the employer told claimant that he could no longer use the company vehicle. The employer intended the ban to be temporary but did not tell that to claimant.

(3) Between March 22, 2016 and March 25, 2016, claimant commuted to work using a family vehicle that was normally unavailable to him. The vehicle was not fuel-efficient and was needed elsewhere beginning March 28th. Claimant felt as though he needed to resume use of the company vehicle before he commuted to work on the 28th, and that if he did not have use of the company vehicle by the time of his next commute to work it would be too late to resolve the situation.

(4) On March 25, 2016, claimant asked a manager whether he could resume his use of the company vehicle. The manager told claimant to speak with his supervisor. Claimant did not speak to his supervisor that day, or at any point before March 28th.

(5) On March 28, 2016, claimant drove to the workplace before work, retrieved his personal belongings, and left without speaking to a manager. He quit work that day because he did not have a vehicle in which to commute to work on a regular basis. Unbeknownst to claimant, the employer's managers had planned to allow claimant to resume using a company vehicle on March 28th.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ 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 quit work because he lacked transportation to commute to work. He did not show good cause for quitting work for that reason. Claimant's situation was not grave. He had access to a family vehicle throughout the week of March 21st through March 25th, and, although expensive and inconvenient, also had access to his family vehicle on March 28th and thereafter. He did not show that it would have been impossible for him to use that vehicle for an additional period of time, or, in the alternative, perhaps take steps to find or borrow another vehicle to use temporarily while attempting to resolve the employer's concerns about claimant's use of a company vehicle on a regular basis. Even if we had concluded the situation had been grave, claimant also had reasonable alternatives to quitting work when he did. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, who felt that he required use of a company vehicle to commute to work, and was told to speak with his supervisor about regaining use of that vehicle, would not have quit work without first speaking with his supervisor. Rather than quitting, claimant had the reasonable alternatives of speaking with his supervisor, or calling his supervisor if the supervisor was not at work, or explaining to the supervisor and/or the other manager that without transportation to work he felt he would not be able to continue working for the employer after March 25th. Notably, although claimant argued that he had to quit work on March 28th because he could not commute to work, and that resolving the transportation issue with the employer on March 28th would have been too late, the record shows that claimant did, in fact, commute to the workplace on the morning of March 28th, and that the employer had intended to allow claimant to resume use of a company vehicle on that date.

For the foregoing reasons, we conclude that claimant quit work without good cause. He is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 16-UI-63349 is affirmed.

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

DATE of Service: August 8, 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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