

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0964**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 141556). Claimant filed a timely request for hearing. On July 27, 2016, ALJ Seideman conducted a hearing, and on August 8, 2016, issued Hearing Decision 16-UI-65173, affirming the Department's decision. On August 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Waste Management Disposal Services employed claimant, last as a driver, from July 14, 2014 to May 11, 2016. Claimant worked at a landfill site in Arlington, Oregon.

(2) A heavy equipment operator claimant considered his best friend also worked at the landfill site in Arlington. Claimant typically came into contact at work with his friend several times a day – at morning briefings, in the lunch room and out on the job site.

(3) On or around May 8, 2016, claimant became aware that his best friend had slept with his girlfriend, who was also claimant's roommate. That evening he attempted to contact the friend but his calls were ignored. The friend was scheduled to begin work at 6:00 a.m. the morning of May 9. At around 5:15 a.m. that morning, claimant went to his friend's house to speak to him. Claimant was allowed inside and angrily confronted the friend, told him he never would have done that to him, said "fuck you" and left. Transcript at 20. When the friend arrived at work, he told operations manager what had occurred and was advised to contact the police, which he did. A "no contact" order was issued against claimant.

(4) On May 10, claimant went to work and before the start of his shift, the operations manager approached claimant to discuss the situation with the friend and the "no contact" order. He told claimant he could use a different lunchroom and to avoid the friend as best he could. However, that day and early the next, claimant unavoidably came into contact with the friend several times, without incident, but was concerned he was in violation of the no contact order and might be arrested and jailed, particularly after

another coworker, a former police officer, warned him that “no contact means no contact at all.” Transcript at 7.

(5) On May 11, claimant approached the operations manager and told him how many times he had been in contact with the friend and that he was extremely concerned about being arrested. The operations manager offered to transfer claimant to a hazardous waste facility a few miles away but told him that he would have to undergo 24 hours of training for that facility before he could be transferred and that it could take approximately one week. Claimant had no paid leave available to him for use prior to the training, and did not want to risk being arrested if he remained at work during that time. Claimant and the manager also discussed the option of being laid off to avoid the conflict and if that was claimant’s choice, the manager would not contest an unemployment claim. Claimant chose that option and left his employment.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

Claimant asserted that the employer agreed to lay him off and not to contest his claim for unemployment insurance benefits. Transcript at 17-18. Regardless of any agreement by the parties, and regardless whether the employer agreed not to contest claimant’s claim, the Department is obligated by law to examine each claim for benefits to determine whether the individual is subject to disqualification because of a work separation. ORS 657.176(1). Under the relevant rule for determining the nature of a work separation, if the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). Claimant admitted that the operations manager gave him the transfer option on May 11 to allow him to continue his employment beyond that day and that he declined the option for stated reasons. Transcript at 34-35. Because claimant could have continued to work for the employer for an additional period of time, but chose not to do so, the work separation was a voluntary leaving.

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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant quit when he did because he did not want to risk being arrested for violating the no contact order by continuing to work at the landfill and did not want to go unpaid prior to the required hazardous waste training and the transfer to that facility was put in place. However, viewed objectively, claimant failed to show that no reasonable and prudent employee in his circumstances, interested in maintaining employment, would have selected the latter option rather than choose immediately to become unemployed and remain so and unpaid for an indefinite period of time. Because claimant had a

reasonable alternative to leaving work, he failed to show that the reason or reasons that prompted his decision to quit constituted good cause under ORS 657.176(2)(c). Accordingly, claimant is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 16-UI-65173 is affirmed.

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

**DATE of Service: September 14, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.