

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1015

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121754). Claimant filed a timely request for hearing. On August 5, 2016, ALJ Shoemake conducted a hearing, and on August 11, 2016 issued Hearing Decision 16-UI-65470, affirming the Department's decision. On August 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he attempted to introduce new information that he did not offer into evidence during the hearing. However, claimant did not contend or show that factors or circumstances beyond his reasonable control prevented him from presenting that new information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the new information that claimant attempted to introduce in his written argument.

FINDINGS OF FACT: (1) Rising Realty, LLC employed claimant to maintain certain rental properties that its owner owned and operated from September 1, 2014 until June 2, 2016.

(2) When claimant was hired and throughout his employment, his work schedule and work duties were not well-defined. Throughout claimant's employment, the owner's husband performed work for the employer. Claimant perceived that the husband was authorized to assign work to him and that he was expected to report to the husband.

(3) During claimant's employment, the owner's husband would ask him to perform tasks that he thought were outside the scope of his job, such as cashing personal checks made out to him and taking the cash he received to the husband or to a mortgage company to pay the mortgage on one or more of the owner's rental properties or having claimant pick up a car at the house of the owner's father. Sometimes, the

husband would ask claimant to prepare rental agreements on behalf of the employer and sometimes the husband requested that claimant do so during evenings or on weekends. The employer paid claimant for all the time he spent performing work-related tasks, including those that the husband requested. Claimant never told the husband, the owner or the employer that he did not want to perform any tasks the husband requested.

(4) Once when, at the request of the husband, claimant was completing notices that were part of the eviction process and it took him a long time to do so, the husband telephoned claimant and when he learned the notices were not yet completed said, “Three and a half hours and you’re still filling them out [the notices].” Transcript at 18. By making that comment, claimant thought the owner was “belittling” him. Transcript at 17.

(5) During claimant’s employment, claimant told the husband that he was partly of Native American ancestry. On approximately three occasions afterward, the husband made “Indian pow-wow sounds” directed at claimant and laughed. Transcript at 9, 10. Claimant never told the husband or the owner that he was offended when the husband made “pow-wow” sounds.

(6) In January 2016, claimant and his wife travelled to Vashon Island so claimant could perform some maintenance work on a rental property. They had dinner one evening with the husband, who happened to be on the island. During the dinner and afterward the husband, who was drunk, inquired of claimant and his wife about their sex life and encouraged claimant to “fuck” his wife. Transcript at 9, 10. After claimant asked the husband once to stop making such comments, the husband brought them up one more time. Claimant did not tell the owner that the husband had made sexually suggestive comments that offended him and his wife.

(7) On June 1, 2016, when claimant was working in Salem, the husband sent a text message to claimant asking him to come to the Portland airport that day to pick him up. Claimant resented that the husband considered him a “personal taxi” service. Transcript at 6. Claimant replied to the husband that he was not going to pick him up. The husband did not further communicate with claimant or insist that claimant come to the airport. Claimant then called the owner and told her he had refused to pick up the husband at the Portland Airport. The owner responded “okay” and did not rebuke claimant or instruct claimant that he needed to travel to the airport to pick up the husband. Transcript at 7. During this conversation, claimant told the owner about the husband’s sexually suggestive comments when he and his wife were on Vashon Island.

(8) On June 2, 2016, claimant notified the employer that he was quitting work effective immediately.

CONCLUSIONS AND REASONS: 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 contended that he quit work on June 2, 2016 because the husband's request that he pick up the husband at the Portland Airport on June 1, 2016 was the "final straw" in a long series of alleged mistreatment. Transcript at 6. However, claimant refused that day to perform a task for the husband that he found personally distasteful, and neither the husband nor the owner had insisted he perform it or did anything other than to accept his refusal. Since both acceded to claimant's position, it is unlikely that it was a grave reason to leave work. With respect to claimant's other allegations, the most weighty appeared to be the husband's alleged behavior on Vashon Island in January 2016. However, claimant testified that after the incident on Vashon Island nothing happened between him and the husband until the husband's request that he travel to the Portland Airport to pick him up on June 1, 2016. Transcript at 12. Given that claimant worked six months after the Vashon Island incident without another allegedly distasteful incident occurring, it is difficult to conclude that the Vashon Island incident was the cause of claimant's decision to leave work or a significant contributing factor in that decision.

Accepting claimant's account of the husband's behavior as accurate, claimant did not notify either the husband or the owner of his concerns or give either the opportunity to resolve them before he decided to leave work. As well, claimant did not establish that there would be any consequences to him if he refused to perform the tasks he considered distasteful or if he raised his concerns with the owner. On this record, claimant did not show that he faced a situation so grave that a reasonable and prudent person would conclude that he had no reasonable alternative but to leave work when he did.

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

DECISION: Hearing Decision 16-UI-65470 is affirmed.

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

DATE of Service: October 4, 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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