

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1037

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 103537). Claimant filed a timely request for hearing. On August 11, 2016, ALJ Vincent conducted a hearing, and on August 18, 2016, issued Hearing Decision 16-UI-2016, affirming the administrative decision. On September 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From August 8, 2014 until May 31, 2016, TMS, a call center, employed claimant as a maintenance worker and janitor. TMS was owned by a husband and wife, and their daughter was the vice president (VP) of operations. Each day, claimant was assigned to open the upstairs area where the offices of the VP of operations and other managers were located, and empty the trash the trash in these offices. Claimant was also assigned to thoroughly clean these offices once a week. Claimant was one of the few employees who had keys that allowed access to the upstairs office area.

(2) Sometime prior to May 31, 2016, the employer solicited donations from employees to give to the brother of an employee who had been injured in the shooting attack that occurred at Umpqua Community College in October 2015. The VP for operations kept the money collected from this solicitation in an envelope in her desk drawer.

(3) On or about May 31, 2016, a manager reported to the VP of operations that the manager had observed claimant enter the employer's property on the weekend, outside of normal business hours, and use an employer vehicle to take large bags of returnable aluminum cans from a storage area. The same manager also reported that he had seen claimant go to the upstairs office area, outside of normal business hours, and remain in the office area for about an hour. The VP for operations checked her desk, and discovered that several hundred dollars were missing from the envelope in which she had been keeping donations received for the employee's brother. The VP for operations concluded that claimant had probably stolen the money from her desk. She reported her suspicions to her father, the employer's co-owner who supervised claimant's work.

(4) On May 31, 2016, one of employer's co-owners talked to claimant and told him that he was suspected of stealing money from desk of the VP for operations' desk. Claimant angrily denied this accusation; the co-owner told him that he believed claimant had not taken the money, and that he thought claimant should "fight" for his job. Audio recording at 9:53. The co-owner suggested that claimant talk to the VP of operations and the other co-owner about the accusations of theft. Claimant then went to the office of the VP for operations and spoke to her and the other co-owner about the alleged theft of money and cans. Claimant repeatedly denied that he had taken any money, but became frustrated and upset because the co-owner and VP for operations did not believe him. The VP for operations told claimant that she was not going to fire claimant, but would not allow him access to the upstairs office area only when another manager was present.

(5) After his discussion with the VP for operations, claimant quit his job. He voluntarily left work because he believed he had been falsely accused of stealing money and of lying about the theft.

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 quit his job because he believed he had been falsely and unfairly accused of stealing money and of subsequently lying about the theft. While claimant might be uncomfortable continuing to work in a workplace where a co-owner and two managers had suspected him of theft, he failed to demonstrate that he faced a situation of such gravity that no reasonable and prudent person would have continued to work for his employer for an additional period of time. Claimant had the firm support of one co-owner, who believed in his honesty, and the record does not show that the disciplinary action imposed on claimant -- that he only access the upstairs offices if a manager was present -- substantially interfered with his ability to perform his assigned duties. Claimant's situation therefore was not of such gravity that no reasonable and prudent person would have continued to work for his employer and attempted to regain the trust of those whom he believed had falsely accused him.¹

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

¹ Claimant testified that he wanted the employer to clear his name by investigating the theft, determining who actually had taken the money, and then apologizing to claimant. We agree with the ALJ, however, who pointed out that quitting his job did nothing to establish that claimant was not guilty of the theft. Audio recording at 12:50.

DECISION: Hearing Decision 16-UI-65913 is affirmed.

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

DATE of Service: October 3, 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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