

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1151

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 160954). Claimant filed a timely request for hearing. On September 27, 2016, ALJ Vincent conducted a hearing at which the employer failed to appear, and on October 5, 2016, issued Hearing Decision 16-UI-68642, affirming the administrative decision. On October 10, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) From September 20, 2009 until July 5, 2016, Baker & Baker employed claimant as a tow truck driver.

(2) Sometime prior to July 5, 2016, employer's owner began scheduling claimant to work many on call hours at night. Because claimant was also scheduled to work during the day, he found that the additional night hours were tiring and stressful for him, and adversely affected his health. Claimant asked to work fewer hours at night. The owner reduced claimant's total on call hours, thereby reducing his pay.

(3) On July 5, 2016, the owner showed claimant a new schedule that again decreased claimant's work hours and further reduced his pay. Claimant asked the owner if he was trying to force claimant to resign. The owner told claimant that he had just hired a new person, and as soon as the new person finished his training, claimant would not have a job. Audio recording at 8:00.

(4) Claimant knew that the new employee would complete his training in approximately one week. Because claimant believed that the owner would discharge him when the new employee finished his training, and also believed that it would be more difficult to find a new job if he was discharged, claimant quit his job on July 5, 2016.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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 voluntarily left work for the employer because he believed the employer was going to discharge him. A claimant demonstrates good cause for quitting a job if the claimant voluntarily leaves work because discharge is reasonably certain and likely imminent, would impair his ability to find other work, and would not be for misconduct. The record shows that claimant’s discharge was virtually assured: the employer’s owner told him that he planned to discharge claimant as soon as a new employee completed his training. Although claimant could have continued working for the employer for another week, he would have worked fewer hours with reduced pay. In addition, claimant believed that having a discharge on his employment history would adversely affect his ability to find another job.¹ A reasonable and prudent person who faced the circumstances that claimant did – a likely discharge that would impair his ability to find new work – would conclude that he had no alternative but to quit his job.

Finally, we consider the reasons for claimant’s imminent discharge to determine if it would have been for misconduct. *See* OAR 471-030-0038(5)(b)(F)(leaving work for good cause does not include resignation to avoid a discharge for misconduct). Because the employer’s owner never told claimant why he wanted to discharge claimant, and the employer did not appear at the hearing, the record is devoid of any evidence regarding the reasons for the discharge. A discharge for unknown reasons is not a discharge for misconduct.

Claimant voluntarily left work for good cause. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-68642 is set aside, as outlined above.

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

DATE of Service: October 25, 2016

¹ *See, e.g. McDowell, supra* (teacher had good cause to resign when there was no chance the school board would overturn the administration’s recommendation to dismiss the teacher, and a discharge would create “serious problems” for the teacher in obtaining future employment.

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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