

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1164

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 162738). Claimant filed a timely request for hearing. On September 30, 2016, ALJ M. Davis conducted a hearing, and on October 3, 2016 issued Hearing Decision 16-UI-68429, affirming the Department's decision. On October 24, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that offered information that was not presented during the hearing and which contradicted aspects of his hearing testimony. Claimant did not explain why he was unable to offer this new information during the hearing, or otherwise show as required by OAR 471-041-0090 (October 29, 2006) that he was prevented from doing so by factors or circumstances beyond his reasonable control. For this reason, EAB did not consider the new information that claimant sought to offer by way of his written argument. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Escape Lodging LLC employed claimant as a part-time breakfast host from July 19, 2015 until July 14, 2016. Claimant worked two to three hour shifts.

(2) In 2016, claimant was 80 years old. As breakfast host, claimant's duties included replenishing supplies in the breakfast bar as needed. The breakfast bar was located on the first floor of the employer's motel. Claimant made approximately thirteen to fifteen trips to a first floor storage room to replenish supplies during his shifts. Claimant generally carried the needed supplies from the storage room to the breakfast bar in a basket.

(3) In late June 2016, the employer relocated the supplies for the breakfast bar to a second floor storage area. The supplies moved to the second floor could be retrieved only by way of a set of stairs. Moving

the supplies required claimant to traverse the stairs thirteen to fifteen times during each shift that he worked.

(4) When the assistant general manager notified claimant that the supplies for the breakfast bar had been moved to the second floor, claimant told the assistant general manager that relocation might pose a problem for him when he needed to restock the breakfast bar. The assistant manager reassured claimant and told him other staff would provide assistance to him if he needed help. Claimant then asked the assistant general manager if he could be trained as a night auditor, and told her that if he took over night auditor duties, he wanted to continue working as the breakfast host.

(5) After the supplies were moved to the second floor and claimant was required to negotiate the stairs to restock the breakfast bar, he became concerned that his balance had deteriorated to the extent that he would fall on the stairs. However, when claimant asked other staff for assistance in retrieving supplies from the second floor storage, they were “usually quite accommodating in helping [him] out” and he was “working it out with [their] assistance.” Audio at 38:36, ~38:54. On the occasions when the assistant general manager or the front office manager asked claimant if they could help him in retrieving supplies from the second floor, he told them he did not need their assistance. Audio at ~32:06, ~34:29, ~40:40, ~41:06. Claimant never told the general manager, the assistant general manager or the front desk manager that he was not physically able to safely retrieve supplies from the second floor or that he was concerned that he would lose his balance and fall on the stairs. Audio at ~41:06, ~41:20. Claimant did not want to tell them he thought that, due to age-related changes, he was no longer able to perform all of the duties of the breakfast host. The general manager, the assistant general manager and the front office manager were not aware of claimant’s concerns.

(6) On July 14, 2016, when claimant reported for work, he learned that the employer had hired a new night auditor and that claimant was not going to work at that position. The employer did not assign claimant to work as night auditor because the employer preferred to have only one auditor on duty overnight, and if claimant worked as an auditor and continued to work as the breakfast host, the employer would need to assign a second auditor to work part of the night shift. Claimant was upset and voiced his disagreement with the employer’s decision during his shift. The front office manager intervened and told claimant he needed to go home for the day because of his attitude. Claimant left. Sometime later, claimant called the front office manager and told him he was quitting work. Claimant voluntarily left work on July 14, 2016.

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 testified he left work because he did not think he could safely travel up and down the stairs to retrieve supplies from the second floor, and knowing that another person had been hired for the night auditor position, he would be required to traverse those stairs several times a shift as the breakfast host. Audio at ~37:30. Claimant did not rebut the testimony of the employer's assistant general manager that the employer did not assign claimant to the night auditor position for neutral business reasons, rather than for malicious ones. Audio at ~35:06. We accept that claimant was legitimately concerned about the physical hazards of navigating the stairs while carrying supplies from the second floor to the breakfast bar.

Rather than leaving work due to safety concerns, claimant had reasonable options to quitting work when he did. Claimant had the alternative of informing any of the employer's management, with all whom claimant appeared to have a good working relationship, that he was concerned about his safety if he continued going up and down the stairs. Since the employer had acknowledged that claimant might need assistance when he was first informed that the supplies had been moved to the second floor, there was no basis for claimant to conclude that the employer would not have found an acceptable resolution to his concerns had he notified management that he needed assistance and he was not comfortable with requesting that assistance on an as needed basis. While claimant might have been reluctant to admit his physical capabilities were not those of a younger person, a reasonable and prudent person of claimant's age, who wanted to continue working, would not have decided to leave work before he raised his age-related concerns with the employer and allowed it an opportunity to address them in a manner he found more acceptable than requesting assistance on an ad hoc basis. Since claimant did not pursue the reasonable alternatives that were available, claimant did not show he had good cause for quitting work.

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

DECISION: Hearing Decision 16-UI-68429 is affirmed.

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

DATE of Service: October 31, 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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