

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1178**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94318). Claimant filed a timely request for hearing. On October 7, 2016, ALJ Wyatt conducted a hearing at which the employer did not appear, and on October 13, 2016 issued Hearing Decision 16-UI-69168, reversing the Department's decision. On October 18, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Blue Ocean Engineering Services, LLC employed claimant from July 6, 2015 until June 10, 2016.

(2) Claimant disliked aspects of his employment. When claimant was hired, he was a recent school graduate and expected to learn on the job, but no training was made available to claimant and he often did not receive feedback on projects he completed. Claimant thought that he was being held to standards that were unrealistic. On some occasions, claimant was harshly criticized and at one meeting coworkers yelled at him when he suggested a resolution to a problem.

(3) Throughout claimant's employment, the employer had established regular paydays every other Friday. On multiple occasions, the employer did not pay claimant on the established payday but later, often on the following Monday or the following Friday. On several occasions, the employer paid claimant using a personal check drawn on the owner's personal bank account. Claimant was concerned about receiving his paycheck on time since he had to pay rent and other bills. Claimant spoke to the owner several times about the delayed receipt of the wages that were owed to him. The owner gave claimant different excuses each time for the delay, such as stating that, "it's ADP's [the payroll company's] fault, but he had the money" or "he was waiting on the money, but it hasn't come through yet." Audio at ~16:34. Each time claimant was paid late, the owner told him "it wouldn't happen again." Audio at ~16:46. However, the late payment of claimant's wages continued to occur. Between approximately April 1, 2016 and June 1, 2016, the employer missed all of its established Friday paydays and claimant was paid late. Audio at ~17:06.

(4) Throughout claimant's employment, when the employer paid claimant using a check drawn on the owner's personal account, the amount of the check was net of federal and state taxes. Claimant became concerned that the employer was not paying to the federal and state taxing authorities the amounts deducted from the check representing the taxes owed on his wages. Claimant thought he would be personally liable to pay those taxes if they were not remitted to the taxing authorities.

(5) Beginning around the middle of May 2016, other employees started leaving employment. Claimant decided it was time to leave work since it was difficult for him to complete his work-related projects without the assistance of coworkers, he was paid late and he was concerned about the employer's continued viability.

(6) On June 1, 2016, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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.

One of the reasons that claimant left work was insecurity about receiving the wages that were owed to him on the regular payday that the employer had established. ORS 652.120(1) requires that "[e]very employer shall establish and maintain a regular payday, on which date the employer shall pay all employees the wages due and owing to them." Throughout claimant's employment, the employer often failed to pay all wages due to claimant on his regularly scheduled payday. Although claimant discussed this issue repeatedly with the owner, the employer continued to fail to pay him his full wages on time. By not timely paying claimant, it appears on this record that the employer was repeatedly engaging in an unlawful employment practice.

The Court of Appeals has recognized that it may be good cause for a claimant to leave work when on an ongoing basis an employer has engaged in pay practices that violate Oregon wage and hour laws. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 464, 954 P2d 1265 (1998) (claimant had good cause to leave work when dispute over wage practices was ongoing and likely to recur in the future); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990) (claimant had good cause to leave work when employer failed to pay him twice in accordance with Oregon law and there was no evidence that the employer would not continue failing to do so); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (not good cause for claimant to leave work when wage dispute not ongoing or likely to recur, and only remaining issue was amount of the back pay owed to claimant). Here, based on the employer's continued failure to pay claimant on its regularly scheduled payday constituted a pattern of violations and presented a substantial risk that the employer's unlawful pay practices would continue to recur at the time claimant left work.

No reasonable and prudent person would continue to work indefinitely for an employer who likely would fail to pay him in accordance with state law on an ongoing basis. Claimant had good cause for leaving work when he did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-69168 is affirmed.

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

**DATE of Service:** November 7, 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.

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