

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1183

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 103105). Claimant filed a timely request for hearing. On October 12, 2016, ALJ Holmes-Swanson conducted a hearing, and on October 13, 2016 issued Hearing Decision 16-UI-69175, affirming the Department's decision. On October 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Griffith Rubber Mills employed claimant from February 1, 2016 to July 7, 2016.

(2) In February 2015, claimant was convicted of online sexual corruption of a child. Claimant notified the employer when he was hired. The employer did not inform its other employees about claimant's conviction.

(3) In early July 2016, claimant had a falling out with another employee. The employee discovered claimant had been convicted of online sexual corruption of a child. On July 6, 2016, the employee informed the other employees, and attempted to provoke claimant by calling him as a "rapist." Audio Record at 9:00. That same day, another employee placed a sign on claimant's vehicle that stated, "Sexual Predator. Hide all your children." Audio Record at 10:00.

(4) On July 7, 2016, claimant met with the employer's shop foreman and a human resources employee. Claimant told them what had happened on July 6, 2016, and stated that he feared for his personal safety, that his vehicle could be vandalized, and that his home could be vandalized if other employees found out where he lived. The shop foreman and human resources employee told claimant they wanted him to continue working for the employer, and offered to attempt to resolve the situation. Claimant stated there was nothing the employer could do to resolve the situation, and immediately quit work without allowing the employer an opportunity to do anything.

(5) If claimant had allowed the employer an opportunity to resolve the situation, the employer would have discussed it with claimant and the two employees, disciplined the employees, and monitored the situation to ensure that it did not escalate. Shortly after claimant quit, one of the two employees discontinued working for the employer. The employer had multiple conversations with the other employee regarding his behavior toward claimant, and gave him a written warning for that behavior.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit working for the employer 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 work because two other employees harassed him on July 6, 2016. One employee called him a “rapist” and informed the other employees that claimant had been convicted of online sexual corruption of a child. The other employee placed a sign on claimant’s vehicle that stated, “Sexual Predator. Hide all your children.” Claimant’s fear for his safety and concern that his vehicle, or possibly his home, could be vandalized were understandable. However, the employer offered to attempt to resolve the situation. Although claimant asserted there was nothing the employer could do to resolve the situation, we find that evidence on that issue, at best, equally balanced. The employer did not disclose claimant’s conviction to the other employees. The employer’s owner credibly testified that if claimant had allowed the employer an opportunity to resolve the situation, the employer would have discussed the situation with claimant and the two employees, disciplined the employees if necessary, and monitored the situation to ensure that it did not escalate. Audio Record at 23:00. Her testimony is corroborated by the fact that, even after claimant quit, the employer had multiple conversations with the remaining employee regarding his behavior toward claimant, and gave the employee a written warning for that behavior. Given that the employees’ behavior toward claimant occurred on a single day, and neither employee threatened claimant or damaged his property, it was not unreasonable for claimant to allow the employer an opportunity to resolve the situation. Claimant therefore failed to show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

We therefore conclude that claimant quit working for the employer without good cause, and is disqualified from receiving benefits.

DECISION: Hearing Decision 16-UI-69175 is affirmed.

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

DATE of Service: November 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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