

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1219

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94532). Claimant filed a timely request for hearing. On October 18, 2016, ALJ Vincent conducted a hearing, and on October 21, 2016 issued Hearing Decision 16-UI-69667, affirming the Department's decision. On October 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Highland Food Market employed claimant from April 19, 2013 until June 21, 2016.

(2) On approximately June 7, 2016, claimant told the manager of the employer's store that he would be quitting in two weeks. Two weeks from that day was June 21, 2016. Claimant told the manager that he wanted to spend more time at home with his baby.

(3) Sometime before June 19, 2016, the manager posted the work schedule for the week of June 19, 2016 through June 25, 2016. Although claimant's regular weekly schedule would have shown him working on June 19, 20, 21, 24 and 25, 2016, that week's schedule did not show him working after June 21, 2016 since he had previously notified the manager that would be his last day.

(4) On June 21, 2016, claimant reported for work. At the end of claimant's shift, the store manager gave him his final check. Claimant told the manager good-bye and did not thereafter report for work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Claimant contended that the employer discharged him on June 21, 2016, while the employer's manager contended that claimant voluntarily left work on that day, as he had previously notified the manager he planned to do. Audio at ~5:30, ~8:30, ~14:07. OAR 471-030-0038(2) (August 3, 2011) sets out the principles for determining whether a work separation was a voluntary leaving or a discharge. If the employee could have continued to work for the same employer for an additional period of time, the

work separation is a voluntary leaving. OAR 471-030-0038(2)(a). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

As claimant described his last day, he testified that the manager abruptly and for no reason informed him at the beginning of his shift “it’s no longer working out,” and without any further explanation or discussion, claimant assumed he was discharged. Audio at ~5:30. Although claimant first testified that he did not have any idea why the manager would discharge him and nothing in particular had precipitated the discharge, he further testified that he did not ask the manager why he was being discharged, did not make any protest or comment in reaction to the manager’s announcement, and worked the remaining five hours of his scheduled shift. Audio at ~5:49, ~6:09, ~6:29, ~6:49. The passivity and lack of reaction to the allegedly unexpected discharge that claimant described is implausible and contrary to common sense. As well, after insisting he did not know what might have precipitated the work separation, claimant then stated in response to a comment interjected by the manager at hearing that he had told a coworker approximately a month before that he was considering leaving work and the manager must have overhead that conversation. Audio at ~8:08, ~8:26, ~9:56. Claimant then reversed this testimony and stated that, at some unspecified time, he actually had a conversation with the manager about quitting in two weeks, but that he had withdrawn that oral statement, emphasizing that he had never submitted a written resignation to the manager. Audio at ~10:22, ~10:37, ~11:13. Claimant’s testimony was often contradictory, revised in response to new information and, taken as a whole, implausible. Since the testimony of the manager was, in contrast, factually consistent, and consistent with common sense, it is accepted as a more reliable account of the facts underlying the work separation. The weight of the reliable evidence shows that claimant was not discharged on June 21, 2016, but that the work separation was a voluntary leaving on that day in accord with the oral notice claimant had given to the manager on June 7, 2016.

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.

The only reason discernible in this record for claimant’s decision to leave work was that he wanted to stay at home with his child. However the record is devoid of any facts explaining why claimant needed to stay at home to provide care for the child or anything suggesting that caring for his child was a grave reason requiring claimant to leave work. Absent additional evidence, there is insufficient evidence from which it can be concluded that grave circumstances caused claimant to leave work or that he had good cause for doing so.

Claimant failed to establish good cause for leaving work when he did, and is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-69667 is affirmed.

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

DATE of Service: November 10, 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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