

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1229

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 102530). Claimant filed a timely request for hearing. On October 14, 2016, ALJ M. Davis conducted a hearing in which the employer failed to appear, and issued Hearing Decision 16-UI-69230, affirming the administrative decision. On November 1, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Fleetwood Homes employed claimant as a cabinet shop worker from September 14 through 15, 2015.

(2) During his first day of work for the employer, claimant was told that he and other newly hired new employees would view a video about safety. The employees were never shown any safety video, however. Claimant observed a number of practices and working conditions he believed were unsafe, including an employee using a saw with a guard that was cracked and a router with a broken switch. Claimant was told that because it took so long to get a tool fixed, employees had the choice of either using the broken tool or “going without” the tool. Audio Recording at 12:15. Claimant was also concerned about the lack of adequate ventilation for employees working in a very dusty area. Audio Recording at 7:28.

(3) Claimant was assigned to perform a job he had never done before – installing Formica on countertops – and one that he was unable to successfully complete. The coworker who trained claimant was unavailable, and other coworkers were busy and unable to assist him. When claimant asked his supervisor for help, the supervisor told claimant they would talk at a later time. The supervisor then walked away and claimant did not see him again. Audio Recording at 12:56.

(4) On September 15, 2015, claimant reported for his scheduled shift, worked two hours, and decided to quit his job. He went to the employer’s human resources office, saw that no one was there, and left the equipment the employer had provided to him – a hard hat and safety glasses. Audio Recording at 13:29.

Claimant voluntarily left work because he believed his working conditions were unsafe and because he was unable to perform the work he had been assigned.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that 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 quit his job because he believed his working conditions were unsafe, and because he felt unable to perform the work he was assigned. Claimant’s concerns about unsafe tools coworkers and inadequate ventilation were legitimate. Claimant failed to demonstrate, however, that these conditions left him no alternative but to quit his job after less than a day and a half of work for the employer. Claimant had the reasonable alternatives of discussing his concerns about safety with his supervisor or a representative from the employer’s human resources office. Claimant’s only attempt to contact a human resources representative occurred after he decided to quit work for the employer, and he never tried to talk with his supervisor about safety issues. To the extent that claimant quit his job because he felt unable to perform the work he had been assigned, he failed to demonstrate good cause for leaving work. Claimant’s difficulties learning the tasks he was assigned was not a grave situation. Employees commonly feel unsure about their work on the first day at a new job, as claimant did; they expect that they will receive training in how to perform their job duties and look to coworkers or a supervisor for assistance. Claimant made only a minimal effort to obtain assistance from his supervisor, however. After his supervisor told claimant they would talk about claimant’s assignment at a later time, claimant apparently concluded that no help would be forthcoming and quit his job. A reasonable and prudent person would have waited to obtain assistance from his supervisor before deciding to quit a job he had held for less than a day and a half.

Claimant voluntarily left work without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-69230 is affirmed.

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

DATE of Service: November 9, 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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