

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1386

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 124827). Claimant filed a timely request for hearing. On December 6, 2016, ALJ A. Mann conducted a hearing, and on December 7, 2016 issued Hearing Decision 16-UI-72431, affirming the Department’s decision. On December 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: In Hearing Decision 16-UI-72431, the ALJ stated that Exhibit 1, “claimant’s documentation,” was admitted into the record, but the ALJ’s subsequent comments make it unclear what the ALJ admitted into evidence. Transcript at 3. Although the record shows claimant submitted a DVD as part of her Exhibit 1 submission, and the ALJ admitted Exhibit 1 in its entirety into evidence, the ALJ also stated during the hearing that she “was not provided the video recording” contained on the DVD and did not need to watch it. *Compare* Exhibit 1 (DVD image); Transcript at 54. To clarify, the materials marked as Exhibit 1 include claimant’s ten-page November 7, 2016 letter to OAH, a mostly-illegible photocopy of “FirePro” tags, a mostly-illegible Facebook photo of an unknown individual holding a spoon, photocopies of two of claimant’s time sheets, a photocopied image of a Memorex DVD claimant labeled “Exhibit 1,” and the Memorex DVD itself. To any extent the ALJ omitted the Memorex DVD from being included in Exhibit 1, we conclude that the omission was in error, and the DVD is hereby included as part of Exhibit 1 to complete the record under OAR 471-041-0090(1) (October 29, 2006). EAB considered the content of the DVD when reaching this decision.

FINDINGS OF FACT: (1) Stewart’s Firefighter Food Catering, Inc. employed claimant as a cook, last from June 1, 2016 to August 19, 2016. The employer contracted with the U.S. Forest Service to provide seasonal catering services at firefighting camps, and had two catering units, each at a different location and each with different management. Claimant had previously worked for the employer in 2015.

(2) During claimant’s 2015 employment, she developed a variety of concerns about her working conditions. Claimant was concerned about equipment safety, coworkers’ knowledge of food safety rules, and the employer’s failure to hold coworkers and managers accountable for their job

performances. She was also concerned that some employees used methamphetamines. Despite her concerns, she chose to return to work for the employer for the 2016 season.

(3) The employer stationed claimant at a different unit in 2016 than she had worked in 2015. Between June 1, 2016 and August 19, 2016, claimant developed additional concerns specific to her 2016 assignment, including unreliable pilot lights on the stove burners, coworkers' ignorance of food safety standards, the employer had re-hired employees claimant believed had used methamphetamines in 2015, and a co-owner made comments of a sexual nature that claimant found offensive. Claimant continued to work for the employer despite those concerns.

(4) During the week preceding August 19, 2016, claimant began to believe that the employer had not paid her for all the hours she had worked. Claimant did not notify the employer she believed she had been underpaid. She wanted to wait until an additional pay period passed before raising the subject. On August 19, 2016, claimant believed that some coworkers were high on methamphetamines.

(5) Also on August 19, 2016, claimant's husband told claimant that the fire suppression system in the kitchen was not properly connected. Although the employer had serviced the system in April and it was not yet due for service, a conduit had become disconnected. The employer used hundreds of gallons of propane to fuel its equipment, the pilot lights were unreliable and claimant used flammable materials when she cooked. Claimant felt afraid for her safety without a fully functional fire suppression system.

(6) Claimant spoke to the assistant manager and a unit leader about the system. She was told that the conduit would be repaired, but believed the assistant manager had implied to her that the fire suppression system was not really connected or functional, would not be repaired, and the employer only had the equipment to make it appear that the employer met the requirements of its contract with the Forest Service. Claimant felt that the employer was not going to make the drug-using employees leave camp or repair the fire suppression system. Claimant felt it would be "one cover up after cover up after a cover up after a cover up," and the employer's co-owner might tell claimant what she wanted to hear about the issues but would not take action to address the problems. Transcript at 11.

(7) Claimant walked off the job and left the firefighting camp mid-shift with the intent of never returning to her job with that catering unit. She was willing to continue working for the employer's other catering unit, but did not ask for a transfer before walking off the job and leaving the firefighting camp.

(8) On August 20, 2016, the unit leader repaired the fire suppression system. Also on August 20, 2016, claimant sent a text message to the employer stating that she wanted to be transferred to another unit. The employer did not consider claimant's request because she had walked off the job and quit work the previous day. On August 24, 2016, claimant sent a text message expressing regret for having left work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 her employer for an additional period of time.

Claimant had a number of concerns about her employment conditions that she developed over two seasons while working in two of the employer's firefighting camps, under different managers each time. Despite claimant's concerns, she worked throughout the 2015 season and approximately six weeks of the 2016 season without issue. It was not until the week preceding August 19th that claimant decided to quit work. We therefore focus on issues that arose during that period as the proximate cause of her decision to quit work.

During the week prior to August 19th, claimant came to believe that the employer had failed to pay her for all the hours she worked. Although claimant submitted time sheets in support of her allegation, she did not explain how those time sheets establish that she was underpaid, and did not consider the problem serious enough to report to the employer, instead choosing to wait she received her next paycheck to see if there was actually a problem. The employer submitted pay records tending to suggest that the employer did pay claimant for all the hours she worked. In the absence of evidence from claimant suggesting otherwise, she did not prove that she was underpaid, much less that her belief she might have been underpaid was a situation of such gravity that she had to quit work without allowing the employer the opportunity to resolve it.

On August 19th, claimant came to believe that some of her coworkers were under the influence of methamphetamine while at the firefighting camp. Claimant believed that coworkers had used drugs the 2015 season and continued to use them during the 2016 season. Although claimant cited the situation as a reason she chose to quit work when she did, she did not explain at the hearing or in her 10-page letter regarding her reasons for quitting how having drug-using coworkers created a grave situation for her. To the extent we can infer that having intoxicated coworkers at a firefighting camp that worked around kitchen equipment necessarily created a risk to others, including claimant, claimant did not assert or show that the coworkers were on duty while intoxicated or explain the nature of the risk they posed to her if they were off-duty at the time, nor did she assert or show that she reported the intoxicated coworkers to the employer or gave the employer the opportunity to address her complaints. The record therefore fails to show the situation was grave, and fails to show that claimant had no reasonable alternative but to quit because of it.

Finally, on August 19th claimant also observed that a conduit in the employer's fire suppression system had become disconnected. Although she reported the problem to the employer and the unit lead and was told they would fix it, she assumed that no one would fix the conduit and left work immediately without giving the employer the opportunity to correct the problem.¹ She did not establish, however, that the

¹ Claimant indicated that an assistant manager used foul language toward her during their conversation, but the evidence on that issue is no better than equally balanced, and even if claimant had been offended by the assistant manager's use of such language the record fails to show that, at any point prior to quitting on August 19th, she told him to stop using the language toward her or notified the employer that he was doing so and allowing the employer the opportunity to address or resolve her complaint. Transcript at 37, 48, 49, 52.

employer did not have a real fire suppression system or that it had no intention of repairing the system based on her report that the conduit had become disconnected. She did not prove that the situation was so grave she had no reasonable alternative but to leave work, and, although she did not have the benefit of foresight at the time, the record shows that the employer ultimately repaired the conduit within one business day of when claimant made the report. The documentation the employer provided also shows that the employer had regular maintenance of its cooking and fire suppression equipment performed, and repaired its equipment when advised to do so by the maintenance vendors. *See generally* Exhibit 2. The record therefore fails to show that the disconnected conduit was a grave situation, or that allowing the employer the opportunity to promptly repair the conduit and ensure the fire suppression system was operational was unreasonable or would have been futile. That claimant did not, herself, consider the situation so grave she had to leave her employment is further demonstrated by claimant's request the day after quitting to be transferred to the employer's other unit, or her subsequent statement that she regretted having left work in that manner.

Given the totality of the circumstances, as developed at hearing and through claimant's exhibit, a reasonable and prudent person would not have considered the conditions claimant described to be so grave that she had to quit work without first either allowing the employer the opportunity to address her complaints or requesting a transfer to the other unit. We therefore conclude that claimant quit work without good cause, and she is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-72431 is affirmed.

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

DATE of Service: January 10, 2017

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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