

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1424**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92811). Claimant filed a timely request for hearing. On December 5, 2016, ALJ C. Smith conducted a hearing, and on December 7, 2016 issued Hearing Decision 16-UI-72440, affirming the Department's decision. On December 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Marathon Coach, Inc. employed claimant as an electrician, last from April 2, 2012 to May 4, 2016.

(2) In 2001, claimant was diagnosed with anxiety. He had panic attacks as a result. In 2016, claimant was not receiving medical care or treatment for his medical condition.

(3) Claimant had ongoing concerns about coworkers' work ethics. Over a period of two or three years he repeatedly reported his concerns to his supervisor. The supervisor's response was typically to state that he was tired of hearing the complaints and "did not give a fuck." Audio recording at ~ 17:20. Claimant's coworkers' work ethics and his supervisor's refusal to address his concerns or correct employees' performance continued to bother claimant.

(4) On September 4, 2016, claimant had to work with "two of the biggest offenders with work ethics." Audio recording at ~ 15:00. At the end of the shift, claimant walked over to the two employees to ask them to complete some work they had not finished. The two employees, who were at the time not performing work and were instead discussing things unrelated to work, indicated they would do the work the next day.

(5) The employees' response "didn't sit well" with claimant. Audio recording at ~ 15:35. Claimant did not report the employees or their behavior on September 4<sup>th</sup> to his supervisor. He believed based on the supervisor's previous responses to his complaints about employees that the supervisor would not do

anything to correct the situation. Claimant did not mention the employees or his ongoing concerns to any other member of management. He assumed that if he did so and they investigated and spoke to his supervisor, the supervisor would tell them he did not care and no one would take action to correct the situation.

(6) Claimant knew that the employer had plans to transfer the two employees he was concerned about to claimant's team at some unknown point in the future, and that he would have to deal with them on a daily basis after that happened. He was not willing to do so and experienced some anxiety at the prospect. After work on May 4, 2016, claimant sent an email to his supervisor stating that he quit. Claimant did not return to work after May 4, 2016.

**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 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). In 2001, claimant was diagnosed with anxiety, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

Although claimant had generalized concerns about his coworkers' work ethics and his supervisor's lack of response, claimant ultimately quit work on September 4<sup>th</sup> because of the prospect of the two employees he considered "the biggest offenders" lacking work ethics being assigned to claimant's team. Audio recording at ~ 23:20-24:25. Claimant did not, however, establish that the situation created a grave situation for him such that he had no reasonable alternative but to quit work, must less that he had to do so on September 4<sup>th</sup>.

With respect to the gravity of the situation, claimant described a work environment that had to have been frustrating for him because of others' failure to perform their work in the same manner in which claimant approached his own work, but he did not describe why other employees' failure to do their work was grave for him. Given that claimant's most recent employee evaluation was positive and included a wage increase it does not appear that other employees' failure to work to his standards affected him, either with respect to his own work performance or economically. Audio recording at ~ 11:00. Claimant also did not assert or show that his concerns about other employees' work was such that it created hazards in the workplace that posed an increased risk to his own health and safety.

With respect to the timing of claimant's voluntary leaving, claimant did not know when the two employees were set to be transferred to his team, so the transfer that caused him to decide to leave work was not imminent. Claimant also testified he could have continued working until the transfer occurred. Audio recording at ~ 24:40. It is also notable that claimant did not notify anyone other than his

supervisor about his concerns before quitting. Although understandable that claimant felt it futile to continue reporting the concerns to his supervisor, given the supervisor's previous responses to his concerns, claimant did not explain why reporting the concerns to other managers would have been similarly futile. He testified that he did not see the point of reporting his concerns to others because he thought his supervisor would also tell them he did not care, claimant did not assert or show that the employer's other managers had a history of ignoring his or others' complaints, or that they always deferred to the supervisor when considering employees' complaints. We cannot conclude on this record that complaining to other members of management about his coworkers' work ethics and his supervisor's lack of response to his complaints about them likely would have been futile or unreasonable under the circumstances.

Given the circumstances claimant described at the hearing, we cannot conclude that any reasonable and prudent person with the characteristics and qualities of an individual with anxiety would have felt he had no reasonable alternative but to quit work when he did. We therefore conclude that claimant voluntarily left work without good cause, and must be disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Hearing Decision 16-UI-72440 is affirmed.

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

**DATE of Service:** January 13, 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](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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