

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1437

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 15, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 135757). Claimant filed a timely request for hearing. On December 14, 2016, ALJ Triana conducted a hearing, and on December 15, 2016, issued Hearing Decision 16-UI-73020, affirming the administrative decision. On December 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) From September 6 through 19, 2016, Journal Graphics employed claimant as a roll clamp operator.

(2) When claimant began working for the employer, he was assigned to be trained during the day shift for approximately one week and to be trained by J.¹ On September 7 and 8, J began speaking harshly and critically to claimant. J told claimant that he was "fucking stupid," that he did not know "where in the fuck" claimant came from, that "anyone can do this [claimant's] fucking job," that claimant "wasn't anything special," and that claimant "wasn't going to make it here." Audio recording at 14:49; Exhibit 1. Claimant was upset and felt threatened by J's remarks, but said nothing to his supervisor or the employer's human resources manager about J's behavior.

(3) Sometime after claimant began working for the employer, he spoke with one of the employer's managers, a person he had known before he started work for the employer. The manager had recently

¹ J is a pseudonym.

returned to work for the company after an absence of several years. Claimant complained to the manager about J's conduct; the manager told claimant that J had been with the employer for 30 years and was best friends with the employer's chief executive officer. The manager said that claimant would just have to endure J's behavior, or choose to find another job. Audio recording at 14:05.

(4) On September 9, 2016, claimant left work early because his apartment had been flooded and he needed to evacuate it. Claimant had already decided to quit his job, but did not want to tell the employer he was resigning until after he had resolved the problems arising from the flooding of his apartment. From September 10 through 18, 2016, claimant was on leave from his work to find a new residence.

(5) On September 19, 2016, claimant went to the workplace to tell his supervisor and the employer's human resources manager that he was quitting his job, effective immediately, because of J's abusive and threatening behavior. Both managers told claimant that the situation with J would be investigated, and reviewed by the employer's higher level managers. Audio recording at 24:39 and 29:00.

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 was offended and felt threatened by the abusive behavior of the individual assigned to train him. The situation that he faced during his first days on the job was grave: his trainer harshly criticized him, belittled his abilities, and used foul language. Claimant had an alternative to quitting his job when he did, however: he could have complained about J's conduct to his supervisor or the employer's human resources manager. Both managers, who learned about claimant's problems with J only *after* claimant decided to quit, indicated to claimant that they were willing to investigate the situation and attempt to resolve it.

Claimant, however, asserted that complaining about J's behavior to his supervisor or the human resources manager would have been futile. Claimant testified that one of the employer's managers (not the manager to whom claimant reported) told claimant that because J and the employer's chief executive officer were friends, the employer would take no action against J. The employer's human resources manager, however, testified that no such current friendship existed; she remembered that approximately 20 years ago, a former president of the employer's company had been a good friend of J's. Audio recording at 31:30. We give greater weight to the human relations manager's testimony, whose position and apparent long experience with the company made her assessment of the situation more credible than that of a lower level manager who had only recently returned to work for the employer. Claimant therefore failed to meet his burden to demonstrate that complaints about J's conduct to the employer's

managers would have been futile. Rather than quitting when he did, claimant had the reasonable alternative of bringing his complaints to the attention of his supervisor and the human relations manager to see if they were able to resolve the problems to his satisfaction.

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-73020 is affirmed.

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

DATE of Service: January 27, 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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