

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0031

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 10, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 151923). The employer filed a timely request for hearing. On December 12, 2016, ALJ S. Lee conducted a hearing, and on December 23, 2016 issued Hearing Decision 16-UI-73599, concluding the claimant quit work without good cause. On January 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Blue Mountain Cattle Inc. employed claimant as a ranch hand from spring 2013 to October 1, 2016.

(2) Throughout claimant's employment, he and the employer's president often argued, and the president often yelled at claimant using foul language.

(3) On September 17, 2016, the president again argued with claimant and yelled at him using foul language. Claimant responded by leaving work early without the president's knowledge. After discovering that claimant had left work early, the president repeatedly telephoned claimant, and finally left a voice message asking claimant to call him. Claimant listened to the voice message that evening, but did not return the president's call or report for work after September 17, 2016. Claimant instead searched for, and found, other work.

(4) Shortly before October 1, 2016, the president's wife mailed claimant his last paycheck. However, when claimant received the envelope, it did not contain the paycheck. On October 1, 2016, claimant telephoned the president to inquire about the missing paycheck, and the two agreed to meet later that day. During the meeting, the president asked claimant what he was going to do, and would have allowed claimant to continue working for the employer. Claimant understood that he could continue working for the employer but was unwilling to do so because he was tired of arguing with and being yelled at by the president. Claimant told the president that he was unwilling to return to work, and had found other work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant failed to establish that he quit work with good cause.

The first issue in this case is the nature of the work separation. 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) (August 3, 2011). 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At hearing, claimant testified that the employer’s president discharged him on September 17, 2016 by leaving him a voice message stating that he no longer had a job. Transcript at 23. However, the president testified that his voice message only stated that if claimant did not return his call or come back to work, he “guess[ed]” claimant did not have a job anymore, implicitly arguing that claimant’s failure to return his call or return to work after September 17 demonstrated that claimant quit. Transcript at 8, 13. Absent a basis for concluding that claimant or the owner was not a credible witness, we find that evidence as to the content the president’s voice message equally balanced. The record therefore fails to support a finding that the employer discharged claimant on September 17, 2016, or that claimant quit work by failing to return the president’s call or return to work after September 17. However, it is undisputed that, as of their October 1, 2016 meeting, the president would have allowed claimant to continue working for the employer. Transcript at 14, 25-27. Claimant admitted that he understood he could continue working for the employer, but was unwilling to do so. Transcript at 25-27. Thus, in telling the president that he was unwilling to return to work, claimant severed the employment relationship. We therefore conclude that claimant quit work on October 1, 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. Where the gravity of the situation experienced by the individual results from his own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

Here, claimant quit work because he and the employer’s president often argued, and the president often yelled at claimant using foul language. The president’s ongoing behavior arguably created a grave situation for claimant. However, the president testified that he behaved as he did because claimant repeatedly called in sick when he was not, took excessively long lunch breaks, left work early without permission on multiple occasions, repeatedly failed to answer or return the president’s telephone calls, failed to report for work days at a time, and refused to assist his coworkers. Transcript at 6-7, 11, 15,

17, 36-37. Although claimant generally, and summarily, denied the president's allegations, Transcript at 27, we find the evidence as to whether the gravity of the situation experienced by claimant resulted from his own deliberate actions, at best, equally balanced. Nor did claimant show he had no reasonable alternative but to act as the president alleged. Claimant therefore failed to meet his burden to establish by a preponderance of evidence that he is not disqualified from receiving benefits under OAR 471-030-0038(5)(f).

Claimant failed to establish that he quit work without good cause under OAR 471-030-0038(4) and OAR 471-030-0038(5)(f). He therefore is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 16-UI-73599 is affirmed.

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

DATE of Service: February 3, 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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