

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0043

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 160129). Claimant filed a timely request for hearing. On December 27, 2016, ALJ Triana conducted a hearing, and on December 29, 2016 issued Hearing Decision 16-UI-73768, affirming the Department's decision. On January 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Willamette Family Inc. employed claimant from January 30, 2009 until October 14, 2016. Claimant initially worked as a detoxification aide at the employer's Buckley facility. In 2013, claimant was assigned to work as a maintenance worker and was no longer assigned to the Buckley facility. As a maintenance worker, claimant needed to drive the employer's vehicles and was required to maintain a valid driver's license.

(2) On Friday, September 30, 2016, claimant consumed alcohol and drove his vehicle. Claimant was stopped by law enforcement officers, arrested for the crime of driving under the influence of intoxicants (DUII) and incarcerated. As a result of the circumstances surrounding his arrest, claimant's driver's license was suspended.

(3) Around October 1, 2016, claimant called his supervisor and informed her that he had been arrested for DUII. Claimant's supervisor suspended claimant from employment to enable the employer to investigate the circumstances under which claimant had been arrested, to learn the crimes with which he would be formally charged and to determine whether claimant could remain employed with the employer. The employer also wanted to give claimant time to pursue an assessment and treatment for alcohol abuse since he had previously been in recovery.

(4) Sometime after October 1, 2016, the employer decided claimant could not continue working as maintenance worker since he did not have a valid driver's license and the employer's insurance company was not willing to insure him when driving the employer's vehicles because of the pending DUII charge. Later, claimant's supervisor notified him that the employer could assign him to work in housekeeping at the employer's Buckley facility, which would allow claimant to remain employed even if he was unable to drive and could not work in a maintenance position. The employer did not inform claimant what he would earn in the housekeeping position and claimant did not ask.

(5) Sometime before October 13, 2016, claimant asked a coworker who worked at the Buckley facility what wage he was earning, and the coworker told claimant that he wage was \$10.50 per hour. Although claimant still had not asked the employer what he would earn if he performed housekeeping at the Buckley facility, claimant thought he would not earn more than this coworker. Claimant had been earning \$15.00 per hour when he was performing maintenance work before he lost his driver's license. Claimant decided he would be unable to pay his monthly living expenses and bills if he earned \$10.50 rather than \$15.00 per hour. Claimant decided he would quit work and that he would subsist on employment insurance benefits until he was able to secure a job that paid at least \$15 per hour.

(6) On October 13, 2016, claimant called his supervisor and told her he was going to quit work. On October 14, 2016, claimant met with the employer, stated he was "moving on" and asked for the vacation pay he had accrued up to that time. Audio at ~27:32. Claimant voluntarily left work on October 14, 2016.

CONCLUSIONS AND REASONS: 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 decided to leave work because he thought that he thought he would earn only \$10.50 per hour working in housekeeping at the Buckley facility and that income would not be sufficient to cover his living expenses. Audio at ~20:10. However, claimant did not ask the employer what he would earn in housekeeping, did not actually know what his rate of pay would be in housekeeping and based his conclusion that he would earn only \$10.50 per hour in housekeeping on what one person working in housekeeping told him that he earned. Audio at ~33:26. A reasonable and prudent person exercising ordinary common sense would not have left work based on an unconfirmed speculation about what he would earn in the housekeeping position. A reasonable and prudent person would not have left work before confirming with the employer exactly what it planned to pay him in the housekeeping position and determining that the anticipated rate of pay would not be sufficient to meet his living expenses. On this record, claimant did not meet his burden to show more likely than not that the rate of pay he would

have receive for the housekeeping position was sufficiently low that it constituted a grave reason to leave work.

Claimant did not show that grave reasons caused him to leave work when he did and that he had good cause for doing so. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-73768 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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