

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0059

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 132427). Claimant filed a timely request for hearing. On January 4, 2017, ALJ Murdock conducted a hearing, and on January 9, 2017, issued Hearing Decision 17-UI-74362, affirming the administrative decision. On January 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From February 2016 until November 4, 2016, Alex Hodge construction employed claimant as a heavy haul truck driver. A requirement of claimant's job was that he maintains a valid commercial driver license (CDL).

(2) The employer required that claimant be available by telephone. The employer had a hands free Bluetooth head set available for claimant's use, but claimant chose not to use it. Audio at 23:21. Sometime prior to October 24, 2016, claimant was cited for using his personal cell phone for a work related call while he was driving the employer's truck. After he was cited, claimant began using a personal hands free Bluetooth head set.

(3) On October 25, 2016, claimant drove the employer's truck to Washington to pick up a trencher. The truck was new, and claimant was stopped at a weigh scale in Washington and told that the truck lacked appropriate permits, current registration, proof of insurance and a license plate. No tickets were issued, however. Audio recording at 6:54. Claimant contacted the employer; the employer told claimant to arrange and pay for the appropriate permits, and that claimant would be reimbursed for these costs.

(4) When claimant returned to Oregon after his October 25 trip to Washington, he traveled at night. Because he was carrying a load that was heavier than the legal limit, he avoided weight stations. Claimant was stopped in Oregon, and cited for failing to stop at a weigh scale and for carrying an oversize load that was not properly marked for night time travel. Audio recording at 15:59.

(5) On November 4, 2016, claimant voluntarily left work for the employer because he believed the work he was required to perform for the employer placed his CDL in jeopardy, due to the citations he had received.

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 believed the employer was requiring him to perform work that jeopardized his CDL, due to citations he had received driving a long haul truck for the employer. Claimant did not explain, however, how and to what extent the citations he had received – for using a cell phone while driving the employer’s truck, for failing to stop at a weigh scale, and for failing to properly mark an oversize load for night time travel – put his CDL at risk. In addition, the record does not support claimant’s assertion that the citations he received resulted from the employer’s directives. Claimant chose to use a personal cell phone on the job, even though the employer had a hands free Bluetooth head set available for him. The employer did not require that claimant travel with a load over the legal limit on his October 25 trip from Washington to Oregon. Instead, the employer considered it claimant’s responsibility as the driver to check the weight of his load before he left for Oregon, and to inform the employer if the load was too heavy so that other arrangements could be made. Audio recording at 24:46. In regard to the night time trip that resulted in a citation for failing to properly mark his load, claimant testified that he was required to travel at night in order to have the equipment at the employer’s job site by the early morning. Audio recording at 19:54. The employer, however, testified that the equipment was not needed in the morning and that claimant could have made the trip during daylight hours. Audio recording at 18:20. Claimant therefore failed to meet his burden to demonstrate that the night time trip he undertook that resulted in a citation was required by the employer.

Based on this record, we find that claimant failed to demonstrate that the work the employer directed him to perform placed him at risk of losing his CDL. Claimant therefore failed to demonstrate that he faced a grave situation that left him no alternative but to quit his job. Because he 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 17-UI-74362 is affirmed.

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

DATE of Service: February 2, 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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