

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0061

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work with good cause (decision # 101541). The employer filed a timely request for hearing. On December 29, 2016, ALJ Vincent conducted a hearing, and on January 5, 2017 issued Hearing Decision 17-UI-74169, concluding claimant quit work without good cause. On January 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Orchid Orthopedic Solutions Oregon, Inc. employed claimant from January 25, 2016 to October 13, 2016. Although claimant was hired to work as a CNC machinist, he performed work as a programmer, performed set up, and worked as a CNC machinist.

(2) Beginning during claimant's first week of work he had problems with the tool and die maker. He felt the tool and die maker was abusive toward him by giving him conflicting instructions, withholding information from him, berating claimant for failing to finish tasks claimant was never assigned to do, saying to claimant and others that claimant would get fired if he did not shape up and would not be there very long, saying that claimant was not strong enough, and commenting on claimant's medical condition. Claimant thought the engineering manager was verbally abusive and harassed him, as well. Claimant felt the tool and die maker and engineering manager both commented that they had personal information about him, including such things as knowing what medication he took, knowing his medical conditions, having his banking passwords and knowing his spending habits, and knowing what video games and shows he watched. Claimant felt that someone must have launched a computer virus on his home electronics that allowed them to monitor him in his personal activities.

(3) Claimant sought intervention with human resources and a mediator for a number of problems he experienced with the tool and die maker and the engineering manager and received some assistance. The employer provided a mediator. He reported safety concerns and ergonomic issues to the employer,

after which the employer engaged in an interactive process to address the concerns while still meeting business needs. Claimant did not feel the employer's responses to his concerns were adequate.

(4) In May 2016, the employer issued claimant a warning stating that his work and conduct was deficient based on the employer's conclusions, among other things, that claimant had used offensive language, told "dirty" jokes, and asked coworkers about potential disciplinary actions. Exhibit 1. By June 2016 the employer concluded that claimant had corrected the listed deficiencies. Claimant thought the warning was unwarranted.

(5) Claimant was uncomfortable with the work station he was assigned. He used it six to seven hours per shift, but the work station was shared by others and was not designed for that much use. Claimant experienced shoulder and wrist pain. He was diagnosed with a shoulder strain at one point and was placed on restricted duty. Claimant sought an ergonomic assessment, requested some equipment that would make the work station more suitable for him and, when he felt the employer was taking too long to address his requests or was non-responsive to them and continued to experience pain, he filed a worker's compensation claim.

(6) The employer provided claimant with some ergonomic supplies. The employer permitted claimant to use a riser he brought from home to raise the height of his computer monitor and allowed him to use foam arm pads on the chair to raise the height of the arms. The employer required claimant to remove the adaptive devices when claimant was not using them because the other employees did not need or want to use them. Due to the location of the work station, coworkers sometimes adjusted the height of the chair, chair arms and computer monitor for safety reasons or to accommodate their own use of the work station or the area surrounding the work station.

(7) Claimant asked the tool and die maker to stop changing the settings on the chair. The tool and die maker refused, citing a safety need to change the settings in order to stow the chair out of the way under the work surface. On another occasion claimant asked the tool and die maker not to discard the foam arm rests. The tool and die maker told claimant he could use his arm rests, but they had to be removable and it was claimant's responsibility to remove them when he was not using the chair. Claimant typically removed and stored the items in a designated location, but sometimes failed to remove them at the end of his shift and others removed them and placed them elsewhere.

(8) Claimant came to believe that the tool and die maker was intentionally moving or disrupting claimant's arm rests for the purpose of upsetting claimant. On October 3, 2016, claimant reported his concern to human resources, and the human resources manager investigated. On October 13, 2016, the human resources manager responded in writing to the complaint that she "did not find any evidence indicating that [the tool and die maker] and or anyone else in your department has or would maliciously move your ergonomic work items intentionally in order to upset you." Exhibit 1. The manager indicated that the arm rests were moved when claimant left them on the work station overnight, they were placed on a file cabinet to get them out of the way, and that she had informed employees of the appropriate place to put the arm rests if needed. The manager wrote that she had identified a communication issue in claimant's department and addressed that, as well as the arm rest storage location, with the employees in claimant's department. The manager invited claimant to contact human resources if he had questions or other concerns.

(9) Claimant was dissatisfied with the response. He felt that it was inadequate, did not address the full scope of his concerns about the way the tool and die maker and engineering manager treated him, and that his working conditions would not change. On October 13, 2016, claimant quit work.

CONCLUSIONS AND REASONS: We agree with 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). 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.

As a preliminary matter, claimant suggested in his written argument that the ALJ erred when finding that the engineering manager engaged in harassment toward him, asserting instead that his relationship with the engineering manager “only soured due his [sic] not taking the hostile work environment serious.” Claimant had testified, however, that the engineering manager was verbally abusive toward him and harassed him. *See e.g.* Audio recording at ~ 6:16 to 22:00. Claimant wrote in his written argument that he “was ordered by the judge to not look at the evidence I had compiled.” The audio recording shows, however, that the ALJ suggested claimant put the written materials aside to provide responsive answers to the ALJ’s questions, but also suggested claimant look at the materials if he wanted to do so to improve his ability to recall alleged instances of verbal abuse, and gave claimant time to review his written materials. Given that claimant’s characterizations of his testimony and events during the hearing, as reflected in his written argument, differ from what actually occurred at the hearing according to the audio recording of the hearing, we cannot discern whether claimant’s testimony or his written argument was the more reliable version of events. Accordingly, we have reason to doubt claimant’s credibility as to the events he described.

Claimant’s allegations of mistreatment by the tool and die maker and engineering manager included allegations that one or both of them had his personal passwords, for example, for his bank account, knew which video games he played and shows he watched, taunted him by humming a theme song he had heard the night before, knew his medical conditions, knew how he had handled a gaming control while at his house, knew how he spent his money, and knew what medication he was taking. When asked by the ALJ how he knew that the tool and die maker and engineering manager had monitored him in his personal life, and how they might have accomplished the task of monitoring him so closely, however, claimant could only speculate. He did not have evidence that anyone had installed software or surveillance equipment in his home with which to monitor his use of electronics or other activities, much less those two individuals, and could not supply a plausible reason why either might have wanted to monitor him. Nor is it plausible, absent such evidence, that the coworkers would have engaged in such surveillance of claimant’s personal activities under the circumstances described.

Claimant's concerns about his working conditions dated back to his first week of employment and appear to have occurred on a fairly consistent basis from that point forward, but he did not quit work when any of those incidents occurred. It appears that the event that triggered claimant's decision to quit work on October 13th was the human resources manager's response to his complaint that the tool and die maker had intentionally moved his arm rests for the purpose of upsetting him. Although claimant found his coworkers' behavior upsetting and felt he was targeted by them, there is little evidence in this record showing that he was, and to the extent he had complaints about his coworkers or working conditions, it appears more likely than not that the employer promptly addressed them, albeit not to claimant's satisfaction. The record shows that beginning the month after claimant's employment, the employer engaged with claimant about his concerns by providing a mediator, ergonomic assessment, ergonomic supplies, accommodated the ergonomic supplies claimant brought from home, authorized a storage area for them, engaged with him and coworkers with respect to the ergonomic supplies, storage issues, and communications among them, and promptly investigated claimant's most recent complaint when he made it. Considering the totality of the circumstances, it is more likely than not that claimant's working conditions and coworkers were not a grave situation, and a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have concluded there was no reasonable alternative but to quit work under the circumstances claimant described.

Claimant quit work without good cause. He is disqualified from receiving unemployment insurance benefits because of his work separation until he requalifies for benefits under Employment Department law.

DECISION: Hearing Decision 17-UI-74169 is affirmed.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, 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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