

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0128

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 134453). Claimant filed a timely request for hearing. On January 17, 2017, ALJ Buckley conducted a hearing, and on January 19, 2017 issued Hearing Decision 17-UI-75028, affirming the Department's decision. On February 2, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB, but did not certify that he provided a copy of the argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). For that reason, EAB did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Bright Wood Corporation employed claimant as a line cutter in its Madras, Oregon plant from July 1, 2014 until November 8, 2016.

(2) On May 1, 2015, the employer re-hired a former supervisor and assigned that supervisor to supervise the work on claimant's shift. The shift on which claimant worked had not been meeting its productivity goals. The new supervisor was tasked with increasing the shift's productivity.

(3) After May 1, 2015, the new supervisor often criticized the work of the employees he supervised, including claimant, and pointed out mistakes they made that resulted in waste, inferior product quality or otherwise diminished the productivity of the shift. The plant at which claimant worked was noisy due to the operation of machines and equipment and employees were required to wear ear plugs. When the supervisor spoke to employees he needed to raise his voice to be heard over the production noise.

(4) Claimant did not like the extent to which the supervisor scrutinized and criticized the work of employees. When the supervisor discussed work performance on the plant floor with employees during

the shift, claimant thought the supervisor was “yelling” and displaying a “belittling” attitude toward him and other employees. Transcript at 7.

(5) On occasion after May 1, 2015, claimant sometimes spoke with the owners when he saw them in the workplace and mentioned that he did not like the way in which the supervisor monitored the activities of the employees and critiqued their work performance.

(6) Sometime around August or September 2016, claimant went to the office of the director of human resources to pick up some gloves. Claimant commented to the director that he was “frustrated” with the supervisory style of his supervisor and he thought the supervisor was not the “correct person” to exercise supervisory authority. Transcript at 30. The director told claimant that the supervisor was an experienced supervisor, and that claimant should approach the supervisor with his concerns. The director told claimant that if speaking with the supervisor did not resolve his concerns, the director would then assist in trying to help resolve them. Claimant did not follow the director’s recommendation and did not speak to the supervisor about his specific complaints.

(7) Sometime in approximately October 2016, claimant brought up to one of the owners that he disliked the manner in which the supervisor was supervising his shift. The owner informed the human resources director of claimant’s comment and the director spoke with the supervisor. The director told the supervisor about claimant’s complaint concerns. From this conversation, the director concluded that the supervisor had not behaved inappropriately and no corrective action was needed. No other employees complained about the supervisor’s behavior.

(8) In early November 2016, claimant told his supervisor that his girlfriend, who was also an employee of the employer was ill and he needed time off from work to care for her. The supervisor permitted claimant to have the time off he requested.

(9) Also in early November 2016, the employer had a general meeting with all employees to discuss its plan to transition from a profit-sharing program to a 401(k) retirement program. At that meeting, claimant brought up in front of the approximately 85 employees in attendance that he had a concern “about the shift.” Transcript at 37. The employer did not think that it was appropriate to discuss in more detail the nature of claimant’s concern at that time because the purpose of the meeting was to present the employer’s plans to implement a 401(k) program. The employer continued with its presentation without addressing claimant’s comments. Claimant did not report any concerns he still had with the supervisor after this meeting.

(10) On November 7, 2016, claimant reported for work. During that shift, the supervisor brought up certain criticisms he had with the employees’ performance. Although the supervisor had “eased off from doing it [criticizing and yelling at employees] as much as he used to,” claimant disliked his “attitude flare up” that day. Transcript at 9.

(11) On November 8, 2016, claimant did not report for work and on November 9, 2016, informed the employer that he needed to care for his ill girlfriend, and that he would not be at work again until Monday, November 14, 2016. Exhibit 1 at 8; Transcript at 46. Claimant did not report for work on November 14, 2016, 15 and 16, 2016 and did not call in to notify the employer that he was going to be absent. On November 16, 2016, the employer concluded claimant had quit work

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Claimant testified that he quit work on November 8, 2016, but disputed the testimony of the employer's witnesses that he simply stopped reporting for work after November 7, 2016 without explanation. Transcript at 4, 5-6. Claimant insisted that he told the department manager on November 8, 2016 that he was quitting. Transcript at 22. Claimant's testimony about what he did or did not do to notify the employer of his decision to leave work on or after November 8, 2016 does not change the nature of his work separation from a voluntary leaving to a discharge. See OAR 471-030-0038(2) (August 3, 2011). Since claimant was by his own admission unwilling to continue working for the employer after November 8, 2016, that the employer might not have considered him to have quit until November 16, 2016 is irrelevant in characterizing the work separation. Claimant's separation was a voluntary leaving as of November 8, 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.

Claimant contended that he left work because the behavior of his supervisor created an "overall unfit work environment." Transcript at 7. While claimant testified that the supervisor "yelled," made "rash statements" and acted "belittling[ly]" toward him and his coworkers, he did not present evidence that the supervisor's behavior was oppressive or abusive. Transcript at 7. Claimant did not show that the supervisor called him or other employees unflattering names, insulted or harangued them or otherwise engaged in intolerable behavior in the workplace. The most that can be reliably inferred from the evidence in this record is that the supervisor was demanding and not reluctant to point out and try to correct errors in the performance of the employees he supervised. The employer's witness conceded as much when he described the management style of the supervisor as "every very verbal, very vocal," "accustomed to holding people accountable for ... performance reasons" and noted that he was brought in as claimant's shift supervisor to "increase the productivity of the department to expected levels." Transcript at 41, 42. Although claimant's experience in working for the supervisor might not have been as pleasant as he would have liked, on this record it was not demonstrated that the supervisor's behavior constituted a grave reason to leave work.

While it appears from the record that claimant might have discontinued reporting for work after November 7, 2016 because of the illness of his girlfriend, he did not contend that was the reason he decided to leave work. Since claimant has the burden to show good cause for leaving, and he presented no information about the nature of the girlfriend's illness, there is insufficient evidence in this record to show either that it was the reason he decided to quit or that it was a good cause for him to do so.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-75028 is affirmed.

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

DATE of Service: March 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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