

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0289

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 130211). Claimant filed a timely request for hearing. On February 27, 2017, ALJ Meerdink conducted a hearing, and issued Hearing Decision 17-UI-77810, affirming the administrative decision. On March 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) BDZ Construction employed claimant as an equipment operator from April 24, 2015 until September 9, 2016. Claimant is an experienced construction worker.

(2) Claimant had "multiple safety concerns" about the way in which the employer conducted his construction business. Although he complained to the employer's superintendent about violations of applicable safety rules he discovered, the employer took no action to correct the violations. Audio recording at 14:50.

(3) On September 9, 2016, claimant was assigned to work as the site foreman on a construction site in Beaverton, Oregon. Claimant saw that trucks entering and exiting the site were leaving dirt on the heavily trafficked main road used to access the site, creating a hazard for vehicles. Audio recording at 5:30. Attempts to clean up the dirt – by spraying water on it, and sweeping it up – only increased the hazardous conditions for vehicles. In addition, the trucks were removing more dirt than permitted by the city of Beaverton. Audio recording at 9:47. The Beaverton city inspector told claimant that the situation was unacceptable. Claimant then stopped the trucks from entering the site, and directed a cleanup of the mess the trucks had made. Had claimant not stopped the trucks, the city of Beaverton would have shut down the job site. Audio recording at 11:14.

(4) Also on September 9, 2016, approximately two hours after claimant stopped trucks from entering the job site where he was working, the superintendent for the job site called claimant and angrily told him that he “didn’t know what he was doing.” The superintendent used foul language to criticize claimant’s actions in stopping the trucks. Audio at 9:49. Claimant then quit his job because the employer refused to maintain safe conditions on its job sites.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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.

The ALJ found that “[c]laimant quit [his job] because he did not want to argue with his manager about safety issues.” Hearing Decision 17-UI-77810 at 2. The ALJ concluded that his manager’s disagreement with claimant’s decision to stop trucks from entering and leaving the job site “did not create such a grave situation that claimant had no alternative to quit. Claimant could have chosen to defend his decision and enforce the safety requirements.” *Id.* We disagree with both the ALJ’s finding and his conclusion.

The incident on September 9 involved a serious safety issue – trucks entering and leaving the job site that created hazardous road conditions on a busy thoroughfare. Claimant’s decision – to stop the trucks rather than have the city shut down the job site – was one consistent with both common sense and safety. His supervisor’s conduct – to argue angrily with claimant about his decision – created a grave situation for claimant because it indicated that any future actions claimant might take to create a safe working site could subject him to harsh criticism and a barrage of foul language. Given the employer’s persistent refusal to address safety violations claimant had identified during the year and a half he worked for the employer, it appears that continuing to argue with the superintendent would have no effect other than eliciting more foul language. A reasonable and prudent person, who was criticized by his supervisor for his decision to eliminate hazardous working conditions and avoid shutdown of a construction site, and whose complaints about safety violations had been ignored for a year and a half, would conclude that he had no reasonable alternative other than voluntarily leaving work.

Claimant voluntarily left work with good cause. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-77810 is set aside, as outlined above.¹

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

DATE of Service: March 31, 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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¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits, if owed, may take from several days to two weeks for the Department to complete.