

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0364

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75321). Claimant filed a timely request for hearing. On December 14, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 28, 2016. On December 16, 2016, the employer requested that the hearing be postponed until January 3, 2017 or thereafter. On December 28, 2016, ALJ Wyatt conducted a hearing, at which the employer failed to appear, and on December 30, 2016 issued Hearing Decision 16-UI-73873, concluding claimant voluntarily left work with good cause. On January 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB). On January 23, 2017, EAB issued Appeals Board Decision 2017-EAB-0025, reversing Hearing Decision 16-UI-73873, and remanding the matter to the Office of Administrative Hearings for further development of the record.

On February 16, 2017, ALJ Wyatt conducted a hearing, and on February 22, 2017, issued Hearing Decision 17-UI-77444,¹ concluding that the employer's request for postponement was timely made and should have been granted, and directing that a hearing be held on claimant's request for hearing on decision # 75321. On March 7, 2017, ALJ Monroe conducted a hearing, and on March 9, 2017, issued Hearing Decision 17-UI-78616, affirming decision # 75321. On March 24, 2017, claimant filed an application for review of Hearing Decision 17-UI-78616 with EAB.

FINDINGS OF FACT: (1) Hermiston Foods, a food processing plant, employed claimant as an electrician from November 23, 2015 until June 10, 2016.

(2) Some time prior to May 30, 2017, claimant discovered that the wiring for the outlets into which trucks plugged to run motors to unload their contents was defective. After checking with a former supervisor, claimant determined that the wiring violated standards set by the National Electrical Code. Claimant was concerned that the defective wiring could cause injury or death to a worker, and that he could be found liable for any such occurrence.

¹ On March 14, 2017, Hearing Decision 17-UI-77444 became final, without an application for review having been filed.

(3) On May 30, 2016, claimant told his supervisor, the employer's maintenance manager, about the electrical problem he had identified. He told the supervisor that he resigning, effective June 10, 2016, but would rescind his resignation if the problem with the wiring was fixed.

(4) On May 31, 2016, claimant discussed the electrical problem more thoroughly with his supervisor. The supervisor told claimant that he would solve the problem, and did so within a few days.

(5) On June 1, 2016, claimant told his supervisor that he would not rescind his resignation and confirmed that his last day of work would be June 10, 2016. Claimant quit his job because he believed that the employer failed to adequately and promptly resolve the electrical problem he had identified.

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 that the employer had not promptly or adequately resolved a problem he had identified with defective and unsafe wiring in the workplace. The parties disagreed about what the employer did (or did not do) when claimant brought the problem to the attention of his supervisor, the employer's maintenance manager. According to claimant, when he told his supervisor about the problem and explained what parts were needed to fix the defective wiring, his supervisor responded by telling him that no one had been killed over the past 30 years and that it was unnecessary to update or upgrade the wiring. 3/7/17 Hearing Transcript at 6. Claimant's supervisor, however, testified that when claimant explained the problem to him, he assured claimant that he would take the steps necessary to resolve the problem, which included purchasing some new parts for the trucks that used the defective outlets, and promptly did so. 3/7/17 Hearing Transcript at 34.

Because we find no reason to doubt the credibility of either claimant or his supervisor, the allegation that the employer did not resolve the electrical problem is no better than equally balanced against the supervisor's assertion that it promptly and adequately addressed the issue. Where the evidence is equally balanced, the party with the burden of proof, here the claimant, has failed to satisfy that burden. We therefore conclude that claimant failed to demonstrate that the employer refused to address an electrical problem that created hazardous conditions in the workplace, or therefore that claimant had no reasonable alternative but to quit his job. Because claimant 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-78616 is affirmed.

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

DATE of Service: April 11, 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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