

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0439**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 75225). Claimant filed a timely request for hearing. On April 5, 2017, ALJ Snyder conducted a hearing, and on April 10, 2017, issued Hearing Decision 17-UI-80676, affirming the administrative decision. On April 12, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument on the other parties, as required by OAR 471-041-0090(2) (October 29, 2006). We therefore did not consider the argument in reaching this decision.

**FINDINGS OF FACT:** (1) Forest River Manufacturer employed claimant as a general laborer from 2008 until January 20, 2017. The employer manufactured recreational vehicles.

(2) The building in which claimant worked had been vacant for a number of years before the employer began using it. Employees used an air wand to clean the floor of the building, which blew “everything around,” including bird droppings. Audio recording at 14:11. In September or October 2016, claimant began to experience hoarseness, sore throats and respiratory problems. He concluded that the bird droppings to which he was exposed were responsible for these symptoms.

(3) On a number of occasions, claimant spoke to his supervisor about his unhealthy work environment. The supervisor expressed concern about claimant’s health, told him to see a doctor, and urged claimant to wear a mask. Claimant declined to wear a mask, however.

(4) In approximately October 2016, claimant saw his regular doctor about the health problems he was experiencing; his doctor referred him to a specialist. Neither claimant’s regular doctor nor the specialist could determine the cause of claimant’s hoarseness, sore throats and respiratory problems. In December 2016, claimant again saw the specialist who again was unable to diagnosis the cause of claimant’s health problems.

(5) On January 20, 2017, claimant called the employer and quit his job. Claimant voluntarily left work because he believed his work environment was endangering his health.

**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 voluntarily left work because his work environment caused him to become ill. Because of the bird droppings to which he was regularly exposed, claimant experienced hoarseness, sore throats, and respiratory problems. Claimant demonstrated that his working conditions constituted a grave situation. Claimant failed to demonstrate that he had no reasonable alternative but to leave work, however. Claimant had the alternative of accepting his supervisor’s suggestions that he wear a mask to minimize his contact with the bird droppings. Claimant failed to demonstrate that his situation was so grave that he needed to quit work when he did, rather than taking the time necessary to try wearing a mask to determine if it was effective in eliminating his health problems.<sup>1</sup>

Claimant rejected his supervisor’s suggestion of a mask because he contended it was a “band aid” approach to his problem, asserting that even if he used a mask, his skin and clothing would still be exposed to the bird droppings. Audio recording at 17:44. Claimant failed to demonstrate that his supervisor, who considered claimant a valued employee and was concerned about claimant’s health, was unwilling to provide claimant with additional equipment if the use of a mask did not fully protect him from the harmful effects of the bird droppings. A reasonable and prudent person who was interested in retaining his job would have tried out a mask and, if necessary, requested additional protective equipment before concluding that a work environment he considered unhealthy left him no alternative but to quit his job.

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-80676 is affirmed.

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<sup>1</sup> We note that claimant’s Exhibit 1, which consists of information about the harmful effects of exposure to bird droppings, mentions the use of masks as one of the ways to safeguard against exposure to bird droppings, demonstrating that the use of a mask would not have been ineffective or futile.

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

**DATE of Service: May 4, 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](http://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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