

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0617

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73546). Claimant filed a timely request for hearing. On May 10, 2017, ALJ Lohr conducted a hearing, and on May 12, 2017, issued Hearing Decision 17-UI-83277, affirming the administrative decision. On May 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: In Hearing Decision 17-UI-83277, the ALJ stated that Exhibit 1 was admitted into evidence at the hearing. The hearing record shows, however, that the ALJ refused to admit the employer's Exhibit 1 because it had not provided a copy of the exhibit to claimant. We affirm the ALJ's ruling at the hearing and Exhibit 1 is not admitted into evidence.

FINDINGS OF FACT: (1) MBF – North America employed claimant as a salesperson from January 24, through March 1, 2017. Claimant's job consisted of selling specialized equipment for bottling, corking, labeling, and packaging wine to wineries on the West coast. The market for the equipment claimant sold was very small; the employer sold approximately 25-40 machines per year. Audio recording at 38:30.

(2) The primary supplier of the equipment claimant sold was a manufacturer in Northern Italy. After a customer ordered a machine, it took approximately 9 to 12 months before the machine was delivered. Because of the location of the manufacturer and the specialized nature of the machines, replacement and spare parts were often difficult to obtain, and customers regularly complained about the length of time their machines were non-functional while they waited for necessary parts. Claimant spoke to the employer's managers about this problem; they told him they were making progress in resolving these difficulties and "hopeful" that the situation would improve. Audio recording at 22:15, 24:11.

(3) Sometime prior to March 1, 2017, claimant attended a trade show in Portland, Oregon and spoke with a representative of a company that had previously sold machines supplied by claimant's employer, but no longer did so. The representative told claimant that he had received many complaints from

customers about late delivery of the employer's machines, and that the "best day" of the representative's life was the day he stopped selling the employer's machines. Audio recording at 14:15.

(4) After speaking with the representative, claimant decided that he would be "committing career suicide" and irreparably damaging his reputation in the wine industry if he continued working for an employer with such a poor record for on-time delivery and servicing of the machines it sold. Audio recording at 23:20. He therefore voluntarily left work for the employer on March 1, 2017.

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 as a salesperson for the employer because he believed that his reputation in the wine industry would be irreparably damaged if he continued to sell wine-making equipment for an employer about which customers complained, because the equipment was not promptly delivered or serviced. Claimant's concerns regarding delivery of the specialized equipment he sold for the employer were based entirely on conversations he had with a representative of a company that had formerly sold the employer's machines. Claimant never sold a machine during the period he worked for the employer and therefore had no direct experience with any customer complaints about late delivery. The representative with whom claimant spoke told claimant that the employer's machines were never delivered on time. The employer's manager denied the validity of the representative's concern, however; he testified that he could not recall a single sale the representative had made for the employer where a penalty was exacted for late delivery of a machine. Audio recording at 46:54. Because the evidence regarding the employer's prompt delivery of machines is, at best, equally balanced, claimant, failed to meet his burden to show it more likely than not that potential customer complaints about late deliveries would create a grave situation for him

In regard to concerns about inadequate supplies of spare or replacement parts, which resulted in delays in servicing the employer's machines and caused customers to complain about loss of production time, the employer's manager admitted that this was a "challenging" situation for customers and employees. Audio recording at 43:40. Managers told claimant that they were making progress in resolving these problems and were "hopeful" for the future, however. Audio recording at 22:15, 24:11. Assuming without deciding that customer complaints about delays in obtaining needed parts for the employer's machines might have created a grave situation for claimant, he had the reasonable alternative of continuing to work for the employer for an additional period of time to see if the managers' hopes for future improvement in servicing its machines were realized. On this record, we cannot say that no reasonable and prudent person would have chosen to continue working for the employer an additional

period of time to see if the improvements the employer was implementing adequately addressed and reduced customer complaints, and quit at a later time only if these efforts were unsuccessful.

Claimant voluntarily left work without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work situation.

DECISION: Hearing Decision 17-UI-83277 is affirmed.

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

DATE of Service: June 13, 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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