

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0692**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113423). Claimant filed a timely request for hearing. On May 25, 2017, ALJ Meerdink conducted a hearing, and on May 26, 2017 issued Hearing Decision 17-UI-54329, affirming the Department's decision. On June 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Starting sometime in approximately 2014, Riverbank, LLC employed claimant as a worker repairing docks and floating home foundations.

(2) After being hired in 2014, claimant worked for the employer on a sporadic, ad hoc basis, when he was not occupied with other work. There were extended periods when claimant performed work for other businesses or people and was too busy to perform work for the employer. The work relationship between the employer and claimant was casual and informal. Sometimes claimant would contact the employer if he needed work and sometimes the employer would contact claimant if it wanted him to perform work. When claimant was working for the employer, the employer usually contacted claimant each day informing him where and when to report for work.

(3) On Friday, July 22, 2016, claimant was working for the employer making some repairs. While working, claimant twisted his knee. Claimant left the jobsite sometime around noon. The employer's owner thought claimant might have left the jobsite because he was upset about the owner having instructed him to carry some lumber down a ramp rather than pushing it. At 12:03 p.m. that day,

claimant sent a text message to the owner. Exhibit 2 at 11. At 12:07 p.m., the owner sent two text messages to claimant, one immediately after the other. Exhibit 2 at 11. The content of the text messages is unclear. However, in none of these messages did claimant tell the owner that he was quitting work, nor did the owner tell claimant the employer was unwilling to continue employing him. On Sunday, July 24, 2016 at 1:23 a.m., claimant sent a text message to claimant. Exhibit 2 at 10. The content of that text message is unclear, but claimant did not state in it that he was quitting work, or that he understood the employer had discharged him. The owner did not respond to claimant's July 24, 2016 text message.

(4) Between July 24, 2016 and January 2017, claimant communicated on a few occasions with the owner. On August 22, 2016 at 19:39 p.m., claimant received a text message from the owner. Exhibit 2 at 12. On December 31, 2016, the owner called claimant and spoke to him for 30 minutes. Exhibit 2 at 14. The content of these communications is unclear. In none of these communications did claimant tell the owner that he was quitting work, nor did the owner express to claimant that the employer was unwilling to allow him to continue working for it.

(5) Between July 24, 2016 and January 2017, the owner did not ask claimant to perform any work for the employer. Sometime in approximately January 2017, claimant filed a claim for unemployment insurance benefits because the employer had not asked him to perform work for some time. At that time, during the winter, the employer did not have any work to give claimant.

**CONCLUSIONS AND REASONS:** There was no work separation between claimant and the employer. While claimant might be disqualified from or ineligible to received benefits for other reasons, claimant is not disqualified based on the facts surrounding the alleged work separation.

In Hearing Decision 17-UI-84329, the ALJ concluded that claimant's work separation was a voluntarily leaving, reasoning that claimant abruptly left the work site before his shift was over on July 22, 2016, did not contact the employer except for one text message sent on July 24, 2016, and that those actions manifested claimant's "inten[tion] to sever the employment relationship." Hearing Decision 17-UI-84329 at 2. The ALJ then determined that claimant was disqualified from benefits because he did not have good cause for leaving work when he did. We disagree that there was a work separation, or that claimant should be disqualified from benefits based on the facts surrounding the alleged separation.

OAR 471-030-0038(1) (August 3, 2011) defines the term "work" as the "continuing relationship between an employer and an employee" and provides that a work separation occurs when the continuing employer-employee relationship is severed. OAR 471-030-0038(2) sets out the standards for determining the nature of that separation. If claimant could have continued to work for the employer for an additional period of time when the work separation occurred, the separation is considered a voluntary leaving. OAR 471-030-0038(2)(a). If claimant was willing to continue working for the employer for an additional period of time when the separation occurred but was not allowed to do so by the employer, the separation was a discharge.

In this case, both the employer's owner and claimant testified that claimant did not quit and was not discharged or, in other words, that there was no work separation. Transcript at 4, 10, 25, 26, 29, 30. Although the testimony of neither was particularly clear about the communications between them from July 22, 2016 through December 2016, neither suggested that the other had communicated any intention

to terminate the work relationship or that anything the other did or said caused them to question that the work relationship was continuing, whether it was claimant leaving the jobsite on July 22, 2016, not showing up again after that day and not seeking additional work from the employer, or the owner not offering additional work to claimant after July 22, 2016. Transcript at 5, 7, 8, 10-11, 25, 26, 27, 29, 30. From the description of both parties as to typical behaviors in their particular employment relationship, it was not usual for claimant and the owner to have extended periods of time when claimant was occupied with other work and did not work for the employer, or for the employer not to contact claimant about performing work. Transcript at 10, 11, 25, 26, 27, 29, 30. Given this background and context, which neither party disputed, that claimant might have left the jobsite and not sought further work from the employer for a period of time was not an atypical occurrence that was properly construed as evidencing an intention to quit work, as the ALJ interpreted it. For the same reason, the behavior of the owner in not contacting claimant and not offering him work for some period of time also cannot properly construed as an expression of the employer's unwillingness to allow claimant to continue working for it. As can best be discerned from this atypical and usual employment relationship, it does not appear that claimant was unwilling to continue working for the employer after July 22, 2016 or that the employer was unwilling to allow claimant to work for it after July 22, 2016. On this record, the evidence is insufficient to show that the employment relationship was severed and that a work separation occurred.

While this decision reverses Hearing Decision 17-UI-84329, which disqualified claimant from benefits based the conclusion that he voluntarily left work without good cause, this decision will not necessarily result in claimant's receipt of benefits. There may be reasons other than the facts surrounding an alleged work separation that may render claimant ineligible to receive benefits.

**DECISION:** Hearing Decision 17-UI-84329 is set aside, as outlined above.

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

**DATE of Service:** July 17, 2017

**NOTE:** This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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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