

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0696

Reversed
Disqualification

PROCEDURAL HISTORY: On April 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 85858). Claimant filed a timely request for hearing. On May 16, 2017, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on May 19, 2017 issued Hearing Decision 17-UI-83875, concluding claimant voluntarily left work with good cause. On June 8, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENTS: On June 7, 2017, the employer submitted a letter and exhibits to EAB in which its representative asked that EAB consider its argument and new information. The employer's letter is construed as a request to have EAB consider new information under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider new information if the party offering the information demonstrates that circumstances beyond the party's control prevented the party from offering the information at the hearing. The employer failed to explain why it did not attend the hearing on May 16, 2017. Moreover, the employer failed to certify that it provided a copy of its argument and new information to the other parties as required by OAR 471-041-0090. Thus, the employer's request that EAB consider its argument and new information is denied.

We considered information received into evidence at the hearing and claimant's written argument, to the extent it was based on the record, when reaching this decision.

FINDINGS OF FACT: (1) Pacific Recycling, Inc. employed claimant from 2010 to February 15, 2017 as an environmental technician and capital improvement manager.

(2) In 2015, the employer filed for a chapter 11 bankruptcy. As part of the employer's reorganization, it replaced members of its management, including the general manager. Claimant assisted with the selection of the new general manager, and favored the hire of the general manager the employer selected based on the manager's experience regarding a metal shredding and sorting machine owned and operated by the employer. The new general manager began on November 1, 2016.

(3) Since before the bankruptcy, claimant had used a personal trailer as his office space on the employer's property. The new general manager discontinued claimant's use of the personal trailer and gave claimant his own office located off the employer's lunchroom. Claimant was dissatisfied that the general manager did not consult with him regarding his office space, and was dissatisfied with the space because of the noise from people on break and microwave ovens, and concerned that he would not be able to maintain the privacy of businesses he communicated with by telephone. The general manager responded that claimant would not need the same privacy he had in the past because his primary duties would no longer involve discussing confidential information to secure financing for the employer.

(4) The new general manager changed claimant's job duties from being a capital improvement manager to being the employer's environmental and safety manager. Claimant told the general manager he felt he lacked the experience and qualifications to be a safety manager. The general manager told claimant they would see how claimant did, and that another employee would do the "bulk" of the safety-related work, and that claimant would do a "piece" of it. Audio Record at 23:32 to 24:00.

(5) Claimant was dissatisfied with changes the general manager made to claimant's work schedule. Before the new general manager was hired, claimant had "worked [his] own schedule," which included four to five daytime hours, three to four days per week, in addition to evening and nighttime hours. Audio Record at 26:50 to 26:52. The new general manager wanted claimant to work regular, set hours. Claimant was concerned that he would not have the flexibility he had in the past to address the needs of his special needs child, although claimant's child was "great now." Audio Record at 28:01 to 28:07.

(6) Claimant had purchased a car from the company before the bankruptcy. The title was not transferred to claimant before the bankruptcy, and it could not be transferred to claimant until the matter was addressed in the bankruptcy, after the reorganization plan was confirmed. Claimant considered the vehicle to be the employer's property, and regularly turned in repair receipts to the employer for reimbursement. The new general manager told claimant he could no longer receive reimbursement for expenses associated with the vehicle, and that claimant needed to insure the vehicle. The general manager "backed off," however, when he received a statement from the employer's bankruptcy attorney. Audio Record at 31:59 to 32:07.

(7) Claimant was dissatisfied with the general manager's conduct when, on one occasion, claimant was walking by the employer's shredder with the general manager, and the general manager stated that there were many "Latin American people" working on the shredder and that "Mexicans don't make good supervisors." Audio Record at 32:20 to 32:34. Claimant believed the general manager was referring to one of the employer's supervisors.

(8) On February 15, 2017, claimant quit work because the employer's new general manager changed claimant's office space, work duties, and schedule, discontinued paying for expenses associated with the company vehicle claimant used, and made racist remarks regarding an employee to claimant.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude 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 work because the employer’s new general manager changed claimant’s office space, work duties, and schedule, discontinued paying for expenses associated with the company vehicle claimant used, and made racist remarks regarding an employee to claimant. In Hearing Decision 17-UI-83875, the ALJ concluded that because the employer did not address or resolve those concerns, claimant had no reasonable alternative but to quit.¹ We, however, do not find the changes imposed by the new general manager so onerous that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

The ALJ found that the general manager’s placement of claimant’s office off the lunchroom “violated claimant’s ethics and created issues with security of the employer’s confidential information.”² However, the record does not support the ALJ’s conclusion or otherwise show claimant’s office location posed a grave situation for claimant. The employer was under no obligation to allow claimant to use a personal trailer for office space. Nor are we persuaded that being located off the lunchroom threatened investors’ financial information when claimant was no longer working to grow the employer’s capital. To the extent claimant quit work because he was dissatisfied with his office space, he left work without good cause.

The ALJ found that claimant’s asserted lack of training or experience regarding workplace safety created concerns for claimant when he was assigned to be an environmental and safety manager.³ However, claimant testified that the general manager told him he would only perform a “piece” of that role. In determining whether any work is suitable for an individual, the Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, and the distance of the available work from the residence of the individual. ORS 657.190. Although the work duties were different than claimant’s former duties, claimant did not show by a preponderance of the evidence that performing a “piece” of the employer’s safety and environmental manager’s duties was unsuitable according to factors such as those provided by ORS 657.190. Claimant did not assert, and the record does not show, that the quality control position posed a risk to claimant’s health, safety or morals. Nor does the record show that claimant was physically unable to perform the job, or that the distance of the work or earnings were problematic for claimant. Claimant therefore failed to establish that he left work for good cause to the extent he left work due to the change in his work duties.

¹ Hearing Decision 17-UI-83875 at 4-5.

² *Id.*

³ Hearing Decision 17-UI-83875 at 5.

The ALJ found that the general manager was causing “difficulty and hardship” for claimant and his family, one of whom has special needs, by changing claimant’s schedule.⁴ However, claimant testified that his child was “great” now and the record does not show that claimant faced a grave situation due to his child’s needs or other factors because of the changes to his schedule. Audio Record at 27:48 to 28:08. Nor is there evidence suggesting that the general manager denied claimant time away from work to attend to the needs of his child. Thus, to the extent claimant left work due to changes in his schedule, he did not leave work for good cause.

Claimant also testified that he left work, in part, because the employer told him to refrain from submitting costs for his company vehicle for reimbursement to the employer. However, claimant testified that the employer “backed off” once its bankruptcy attorney sent the employer a letter regarding the vehicle. Audio Record at 32:00 to 32:07. The record does not show that the vehicle costs were still in dispute when claimant quit, or that the matter would not be resolved as part of the bankruptcy. To the extent claimant left work due to a dispute regarding his company vehicle expenses, he failed to show he left work for good cause.

Finally, although the comments that the general manager made to claimant regarding a Latino employee were understandably of concern to claimant, claimant did not show that the statements created a grave situation for claimant. Moreover, a reasonable and prudent employee, exercising ordinary common sense, would not have quit before attempting to address the matter with the employer. On this record, claimant did not show good cause for leaving work when he did due to racist statements made by the general manager.

In sum, claimant failed to establish that he quit work with good cause, and for that reason is disqualified from the receipt of benefits.

DECISION: Hearing Decision 17-UI-83875 is set aside, as outlined above.

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

DATE of Service: July 10, 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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⁴ *Id.*