

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0779**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115350). Claimant filed a timely request for hearing. On June 22, 2017, ALJ Meerdink conducted a hearing, and on June 23, 2017 issued Hearing Decision 17-UI-86434, affirming the Department's decision. On June 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the entire hearing record and claimant's written argument to the extent his argument was based on the record.

**FINDINGS OF FACT:** (1) Huggy Bear's Cupboards, Inc. employed claimant from April 2006 until April 28, 2017 as a woodworker in all its departments.

(2) Claimant had bipolar disorder.

(3) On April 20, 2017, claimant called the employer and left a voicemail message that he was unable to work due to illness. The evening of April 20, 2017, claimant sent the operations manager a text message stating that he needed two days of personal leave. The operations manager responded to claimant that he needed to fill out paperwork requesting leave. On April 21, 2017, claimant called the employer and left a voicemail message that he would not be reporting to work that day, but did not give a reason for his absence.

(4) On Monday, April 24, 2017, the operations manager had claimant's timecard, medical leave paperwork, and the employer's written policy regarding personal leave ready for claimant in her office. Claimant reported to work about ten minutes before his shift began and went to the shop to "punch" his timecard in the time clock, but saw that his timecard was not there. There were five or six employees waiting to use the time clock, but no members of management were in the office other than the foreman. Claimant felt embarrassed that his timecard was not there, and believed he may have been suspended or discharged. He told the employees who were waiting at the time clock to ask the employer to call him.

(5) On April 25, 2017, claimant called the employer and left a voicemail message stating that he would be absent from work that day. Claimant sent the operations manager a text message stating that he had reported to work the previous day, and that his timecard was missing, so he was embarrassed and left work. The operations manager responded to claimant's message, "Call me on the office phone. I'm sitting right here." Audio Record at 24:07 to 24:11. Claimant did not call the operations manager. The operations manager tried to call claimant. The call went to claimant's voicemail, which stated the voicemail box was full. The operations manager sent claimant a text message stating, "There is nothing I can do if you won't talk to me." Audio Record at 24:21 to 24:25.

(6) Claimant was scheduled to work for the employer from 7:00 a.m. to 3:30 p.m. on April 26, 27 and 28, 2017. Claimant did not report to work or contact the employer before his shift began on April 26, 27 or 28. The employer was prepared to discharge claimant for failing to report to work or contact the employer those days.

(7) The afternoon of Friday, April 28, 2017, claimant sent the operations manager a text message that stated he was "stuck in traffic" but was "on his way." Audio Record at 24:36 to 24:42. Claimant called the operations manager and told her he was at a restaurant, and asked if she could meet him there because he did not want to go to the office, and wanted to discuss medical leave. The operations manager met claimant at the restaurant and told claimant that he needed to return to the office and speak with the foreman. Claimant went to the employer's office and picked up his paycheck. The foreman had already left work for the day. Claimant told the operations manager that he would speak to the foreman, but claimant did not speak to the foreman. The operations manager attempted to give claimant the medical leave paperwork, and told claimant that he needed to provide a start date and end date for a leave of absence. Claimant responded that he did not want the paperwork. The employer was willing to allow claimant to continue working on Monday, May 1, 2017 and expected him to report that day.

(8) Claimant did not contact the foreman, otherwise contact the employer or return to work after April 28, 2017.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

**Work separation.** It is first necessary to determine the nature of the work separation in this case. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Although the employer was prepared to discharge claimant for failing to contact the employer or report to work on April 26, 27 and 28, claimant could have continued to work for the employer after April 28, as evidenced by the operation manager's offer to have claimant apply for leave, and willingness to allow claimant to continue working on May 1, 2017. Because claimant could have continued to work for the employer for an additional period of time, but did not, the work separation was a voluntary leaving.

**Voluntary Leaving.** 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). Claimant had bipolar disorder, likely a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

In the present case, the claimant testified that he did not return to work because he felt embarrassed when the employer withheld his timecard on April 24 and felt the employer did not value his contribution to the business and did not want him to continue working. Audio Record at 13:09 to 15:28. Claimant had bipolar disorder. However, claimant failed to show that his bipolar disorder prevented him from applying for the medical leave offered by the employer or pursuing some other accommodation needed for his condition. Instead, claimant’s testimony shows that he did not continue working because he felt embarrassed and mistreated by the employer’s reaction to his attendance violations. The record fails to support claimant’s interpretation of the employer’s actions where those actions were reasonably based on claimant’s failure to report to work or contact the employer before his shift for three consecutive days. Claimant failed to show that no reasonable and prudent person with bipolar disorder would have pursued the employer’s offer of medical leave or asked the employer to otherwise accommodate his condition, or that he was unable to do so due to his bipolar disorder. Absent such showings, we do not find that claimant had no reasonable alternative but to quit work. Claimant quit work without good cause and is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 17-UI-86434 is affirmed.

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

**DATE of Service:** July 25, 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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