

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0785

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103023). Claimant filed a timely request for hearing. On June 5, 2017, ALJ Amesbury conducted a hearing, and on June 13, 2017 issued Hearing Decision 17-UI-85556, affirming the Department's decision. On June 29, 2017, the ALJ issued Hearing Decision 17-UI-86993, amending Hearing Decision 17-UI-85556 to include a date for disqualification, but not otherwise changing its substance. On July 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument which contained information that was not part of the hearing record. Claimant failed to show that factors or circumstances beyond his reasonable control prevented him from offering that information during the hearing. For that reason, under OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Titan Timber Corp. employed claimant as a log loader operator from January 2, 2017 until February 27, 2017.

(2) During the time claimant was employed, claimant's supervisor was a large man who spoke in a loud voice. Claimant perceived the supervisor as "gruff," critical of crew members, volatile, "hot-tempered" and "overbearing." Audio at ~27:40, ~28:14. Claimant disliked supervisor's manner. However, the supervisor had had never threatened crew members or used physical intimidation.

(3) During the time claimant was employed, the windshield wipers on the machine that claimant operated did not work when the motor was left on too long. Claimant had broken a knob that would have overridden the motor shut-off and engaged the wipers from the interior of the machine. Claimant told the supervisor that the windshield wipers needed to be repaired. The supervisor told claimant that he had a spare knob, but claimant did not take the knob and did not install it on the machine. The supervisor tried to order a new motor for the wipers but he was unable to locate one for the particular

model of machine that claimant operated. The machine that claimant operated also did not have a defroster due to its age. When the interior of the windshield fogged up, claimant was required to wipe it with a cloth to clear it. The machine that claimant operated also had a throttle motor that was faulty. When the supervisor became aware of the faulty throttle motor, he ordered a new one for claimant's machine. The throttle motor was not immediately available and the supervisor back-ordered it. In the interim, until the motor arrived, claimant engaged the throttle manually from outside of the machine by reaching under its hood.

(4) On Friday, February 24, 2017, claimant, the yarder engineer and the supervisor were working together as a crew loading logs. Because a log loading crew generally consisted of four members, the workload was heavier than usual that day. The supervisor left work early. Before leaving, the supervisor told claimant and the yarder engineer he wanted them to work until they had processed enough logs for two truckloads that would be picked up on Monday. Sometime after the supervisor left, claimant and the yarder engineer shut down operations and went home. On Sunday, February 26, 2017, the supervisor visited the job site. The supervisor did not see enough logs to constitute two loads, and he concluded claimant and the yarder engineer had shut down early on Friday rather than performing work as he had instructed. That day, the supervisor contacted the yarder engineer and "chewed" him out about the number of logs that had been processed. Audio at ~16:30.

(5) On Monday, February 27, 2017, claimant and the yarder engineer drove to work together. During the ride, the yarder engineer told claimant that the supervisor had confronted him about the number of logs they had processed on Friday and had "cussed" and "yelled" and expressed his displeasure with them in strong terms. Audio at ~ 16:30, ~17:28. About two hours into the shift, the yarder engineer and the supervisor exchanged words. The yarder engineer told the supervisor he was going home to think about some things. After the yarder engineer left, the supervisor walked past claimant and asked claimant if he knew why the yarder engineer had left. When claimant mentioned that "maybe it was the chewing out he took [from you] over the weekend," the supervisor responded, "I can't please everybody." Audio at ~22:14. Claimant then told the supervisor that he was leaving. Immediately after he made this statement, claimant decided he was quitting and was not going to return to work. Claimant decided to quit because he perceived the work environment as being too "uncomfortable" as result of the reduced-sized crew, the supervisor's behavior and the crew's inability to please the supervisor. Audio at ~15:08, ~23:26, ~26:38.

CONCLUSIONS AND REASONS: 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.

With respect to the claimant's discomfort with the work environment, claimant focused principally on the supervisor's behavior. While claimant broadly described the supervisor's behavior as "gruff," "hot-tempered," "overbearing," and "abusive," he provided little specific detail to support these characterizations. The only specific instances of the supervisor's behavior that claimant recounted were on February 26 and 27, 2017. According to claimant, on those occasions, the supervisor "chewed out" the yarder engineer, "yelled" at him and "cussed." Audio at ~16:30, ~17:26. However, claimant and the supervisor both testified that it was the supervisor's extreme displeasure with the work that claimant and the yarder engineer had completed in his absence on February 24, 2017 that precipitated the supervisor's behavior. On these facts, there is insufficient evidence to conclude that the supervisor's expression of displeasure at the yarder engineer on one occasion was so objectively disproportionate that it created a grave reason for claimant to leave work. Significantly, although claimant expressed his displeasure with the supervisor's behavior in general, he admitted that the supervisor had never threatened him or engaged in physical displays of anger toward him or, presumably, anyone else. Audio at ~28:02. Claimant also did not present evidence showing that the supervisor harangued him or anyone else, engaged in angry tirades or displayed unprovoked fits of temper. Absent more concrete and specific evidence about the supposedly objectionable aspects of the supervisor's behavior and the harm to claimant from it, claimant did not, on this record, meet his burden to show that the supervisor's behavior was a grave reason for him to leave work.

With respect to the reduced size of the crew, claimant also did not show that it was a grave reason for him to leave work. Aside from increasing the workload of the three remaining crew members, claimant did not suggest any other adverse impact from it, such as that it was unreasonably burdensome for the crew to perform such a workload or that it imposed objectively unreasonable work demands on them. Similarly, claimant's contention that the crew could not please the supervisor does not, without more, show the existence of an objectively grave situation. That a supervisor may be demanding or difficult to satisfy does not mean, in and of itself, that a reasonable and prudent employee would have left work rather than trying to meet the supervisor's standards. On this record, claimant did not show that the reduced crew size or difficulty in pleasing the supervisor was a grave reason to leave work.

Finally, claimant raised certain alleged work safety issues with the machine he operated as additional complaints against the employer. From claimant's testimony, it did not appear that those safety issues were the proximate, or precipitating, cause for his decision to quit work. Audio at ~33:16, ~35:29. In addition, claimant did not dispute that the supervisor had ordered a replacement for the faulty throttle motor he cited as a safety concern, and that the motor was on back order. Audio at ~47:30. Claimant also did not dispute that the lack of a defroster in the machine he operated was not attributable to the employer's actions or inactions but due to the age of the machine. Audio at ~46:25. Claimant also did not challenge the supervisor's testimony that he could have safely operated the machine without a defroster by wiping the windows clear with a cloth. Audio at ~46:25. With respect to the final safety issue that claimant raised, the faulty windshield wipers, claimant did not dispute that the supervisor had unsuccessfully tried to locate a replacement motor. Audio at ~45:41. As well, claimant could have, but did not, rectify the problem with the wipers by replacing the broken switch knob with a knob in the supervisor's possession. Audio at ~45:41. Furthermore, the supervisor testified, and claimant did not dispute, that several organizations had inspected the employer's operations and equipment for adequate safety precautions and no violations were discovered. Audio ~51:51. Assuming that claimant left work, in part, due to perceived safety issues, he did not meet his burden to show that those issues rose to a grave level or that they were a grave reason for him to leave work.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-86933 is affirmed.

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

DATE of Service: July 28, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.