

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0810**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144822). Claimant filed a timely request for hearing. On June 26, 2017, ALJ Lohr conducted a hearing, and on June 28, 2017 issued Hearing Decision 17-UI-86837, affirming the Department’s decision. On July 5, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Casa Diablo employed claimant as a laborer. Claimant began working for the employer in approximately 2014 and was discharged in 2016. In May 2016, the employer rehired claimant and claimant continued working for the employer until April 3, 2017.

(2) On April 3, 2017, the employer’s owners assigned claimant to work on a deck project. Claimant was upset that the employer was not helping him with the project, as he believed the employer had promised to do, and also believed that the employer was taking advantage of him. Claimant generally believed that the owner and his supervisor were mistreating him. He told the owner he was going home.

(3) Claimant then sent a text message to his supervisor stating, “I’m moving on with my life I done trying be you people s friends I have no assentive or will to work for you anymore . . . There is to much work out there for someone like me and I am done wasting my life away for selfish people And being used and taken advantage of . . . you have wasted 4 years of my life . . .”<sup>1</sup> The employer accepted

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<sup>1</sup> Exhibit 1 “A”; all citations to Exhibit 1 “A” are quoted as they appeared in the originals.

claimant's resignation, stating, "K. I wish you all the best. Turn your keys over to Jack []. We will get them from him. Farewell."<sup>2</sup>

(4) On April 3, 2017, April 4, 2017 and April 6, 2017, claimant sent a series of text messages that included insults, threats of death and injury, assurances that his threats were not meant as jokes and that claimant was willing to die in order to take the employers' lives, and wishes that his employers would be lynched or get Alzheimer's disease.<sup>3</sup>

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ 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).<sup>4</sup> 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 of normal sensitivity would have continued to work for his employer for an additional period of time.

As a preliminary matter, where the evidence was in dispute we found facts in accordance with the employer's evidence because claimant's testimony was not reliable. Claimant provided evasive answers

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<sup>2</sup> *Id.*

<sup>3</sup> See Exhibit 1 "A". The text messages included the following statements: "Honestly you be lucky [] keep your teeth at this point"; "I'm not done with you ever till death do we part partner and hay fuck you"; "If you think you the only one that mater in this world and diablo is god you will soon see my god you and me standing there together in front of my god and thy will diced what do with you not me"; "You not got the hart do me so I will have do you so we get there"; "Think it's funny [] ha ha I not laughing"; "I going old school you and do you like thy once did black peoples and hang your middle name to blame"; "Honestly I have nothing to loose but to take you with you want ruin my life and think you take advantage of me I take yours and mine"; "I honestly ready meet my maker are you?"; "You want push me over I'm taking you with you can count on that"; "You think funny [] I not thinking so you will soon see joke over"; "I make you a joke the shy you joke about me ha ha you think funny I not and death not scar me I'm ready are you"; "I had a vision and it's time I take care of it"; "Things not work for me it's all coming down on you if it cost my life it will be worth taking yours"; "Take it as you may I'm not making threats fuck with my life I will fuck with yours"; "My life is not a game it's real and I'm here to die"; "You choose to play game with my life now I choose to play with"; "You got 2 guns that I know of you should keep them close and I not scared take a hot one"; "The way you have sucked the life out of me only make me want put a rope around your neck so I can watch you take your last breath;" "It's just to bad people like you are allowed to breath the same air I do if I had my choice idea already roped you for the way you have took advantage of me;" and "I hope you get altimere."

<sup>4</sup> Claimant included a copy of a letter stating that he was hospitalized in mid-April 2017 for psychosis and agitation. While psychosis and other mental health conditions might be considered permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h), the record fails to show whether claimant's psychosis and agitation were diagnosed long-term or permanent conditions, symptoms of other conditions, or were short-term or isolated conditions. Absent evidence that claimant has been diagnosed with those or any other particular mental health condition as a long-term or permanent impairment, the applicable "good cause" standard in this case is that of a reasonable and prudent person without impairment.

to questions and did not want to answer questions about the contents of Exhibit 1.<sup>5</sup> Claimant's answers to certain questions were combative.<sup>6</sup> Claimant denied sending the text messages, then suggested he had sent them, then suggested that he might not have sent them; he denied knowing the contents but then referred to the contents of the messages as "jibber jabber" he "more than likely" sent the night he quit work when he was drunk; he also denied having sent threats of physical harm in the text messages despite the fact that the text messages included statements that the supervisor would be "lucky [] to keep your teeth at this point," asking if the supervisor was "ready to meet my maker" or ready for death, that it would be "worth taking your[]" life and other threats.<sup>7</sup> With respect to claimant's claim that he sent the messages the night he quit while drunk, claimant could not explain how that was true given that the text messages were sent on three different days.<sup>8</sup> Claimant also suggested that his decision to quit work was his union's fault and his supervisor's fault for going on vacation, and that the text messages were the employer's fault, and took no responsibility for the messages, quitting work, or the circumstances under which the employer had discharged him in 2016.<sup>9</sup> In sum, claimant's testimony was inconsistent, implausible in many respects, and lacked credibility, and was therefore not a reliable source of information about what happened at the time of his work separation. Accordingly, where the parties' evidence was in dispute we found facts in accordance with the employer's version of events.

Claimant quit work because the owner assigned him work on a deck project that he did not want to perform. The situation was not grave; claimant had worked on the deck project under similar circumstances for months, had once rejected the supervisor's suggestion that he did not need to work on it when it was raining because it might be unsafe, and, although he was a laborer rather than a carpenter, he did not assert or show that he lacked the experience or expertise to do the work. Claimant alleged at the hearing that working on the deck was unsafe, but did not establish more likely than not that it was, or that he and the employer lacked the ability to implement safety measures that would have resolved that concern. The preponderance of the reliable evidence in the record establishes that claimant only rarely complained to the employer about the deck job, did not tell the employer it was unsafe or ask for safety equipment, and that on the occasion that he asked the supervisor for help with one aspect of the work the supervisor helped him. Under the circumstances, rather than quit work because he wanted help with the deck project or thought it was unsafe, claimant had the reasonable alternatives of asking the owner or supervisor for additional help, notifying them that the work site was unsafe, and asking for safety equipment. Although claimant suggested in his testimony that he had done so, and that further requests would be futile, the employer's testimony that he never made any such requests carried more weight and suggests that, had claimant complained or requested help or safety gear, the employer would have been responsive to his complaints and requests.<sup>10</sup>

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<sup>5</sup> Audio recording at 18:00-19:40, 33:00, 39:30, 46:15, 51:00.

<sup>6</sup> Audio recording at 18:35, 18:45, 40:45, 54:25.

<sup>7</sup> Audio recording at 43:00-46:05, 52:30, 53:20.

<sup>8</sup> Compare Exhibit 1 "A"; Audio recording at 44:00-45:20.

<sup>9</sup> Audio recording at 33:00-34:00, 34:30, 46:50, 47:30, 53:45.

<sup>10</sup> Audio recording at 1:01:00-1:08:15.

Claimant did not establish that the circumstances that caused him to leave work were so grave that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would also have had no reasonable alternative but to leave work because of them. He therefore did not establish good cause for quitting work, and he must be disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Hearing Decision 17-UI-86837 is affirmed.

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

**DATE of Service:** July 31, 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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