

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0836

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 # 85527). Claimant filed a timely request for hearing. On June 27, 2017, ALJ M. Davis conducted a hearing at which the employer did not appear, and on June 28, 2017 issued Hearing Decision 17-UI-86766, affirming the Department's decision. On July 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Restaurants Unlimited/Citi Grill employed claimant as a dishwasher from November 23, 2016 until April 24, 2017.

(2) During the first week of claimant's employment, claimant became aware that a particular coworker was undercutting another coworker's authority by telling claimant not to follow the other coworker's advice about work-related matters. Sometime later, claimant realized that the same coworker was often absent from the workplace without permission although he was clocked in.

(3) On February 15, 2017, claimant and two coworkers told the manager about the coworker who was often clocked in but not present in the workplace.

(4) On April 23, 2017, claimant was working and took some sauté pans to the cooks in the kitchen. When he did so, one of the line cooks called claimant a "snitch" in front of the entire line and told claimant "it's not your job to be telling on people around here." Audio at ~14:56, ~17:27. Although over two months had elapsed since claimant had spoken to the manager about the coworker's absences from the workplace, claimant believed the line cook was referring to his actions in making that report. The line cook was not the coworker who was the subject of the February 15 report. Claimant was offended by the line cook's reference to him as a "snitch." Claimant believed that the disrespect shown to him by the line cook's comment, if left unchecked, would result in him being bullied by other coworkers.

(5) On April 24, 2017, claimant met with the chef and two other managers to report that he had been called a “snitch” the day before. One of the managers was the same manager to whom claimant had made the February 15 report. Claimant described for the managers the observations that had led to the February 15 report. The chef commented that she had not known about any problems in the workplace. The manager to whom claimant had made the February 15 report stated that he did not recall claimant making any report to him on February 15. The two managers and the chef then became silent and stared at claimant. Claimant interpreted their silence to mean that if he did not like the work environment, he should quit. Claimant did not disclose to the chef or the managers that he felt unsafe in the workplace.

(6) On April 24, 2017, claimant left the workplace and did not return.

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.

Claimant testified that he quit work because the managers took no action after he reported being called a “snitch” the day before and he feared that unidentified coworkers would start bullying him because the managers had not intervened. However, claimant did not present any evidence from which it could reasonably be inferred that such bullying likely would occur. Indeed, over two months had elapsed without incident between when claimant made his initial report to the manager on February 15, 2017 and when he was called a “snitch.” In addition, claimant presented no evidence, and did not contend, that he was threatened in any manner by any of his coworkers at any time, including the line cook or the coworker who was the subject of the February 15 report. While claimant was understandably offended that the line cook called him a “snitch,” claimant failed to show that the line cook’s reference was such a slur that it constituted, in and of itself, a grave reason for him to leave work. On this record, no objectively grave reasons for claimant’s leaving work can be discerned. Absent a showing of gravity, claimant did not meet his burden to show he had good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-86766 is affirmed.

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

DATE of Service: August 1, 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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