

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0962

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141808). Claimant filed a timely request for hearing. On July 28, 2017, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on July 31, 2017 issued Hearing Decision 17-UI-89253, affirming the Department's decision. On August 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Franz Family Bakery employed claimant as a production helper from April 18, 2017 until claimant quit work on April 22, 2017.

(2) Before claimant began working for the employer, he had no experience working on a production line in a commercial bakery. From April 18 to April 21, 2017, claimant worked picking up bread and muffins from a conveyor belt, and packing them into bags and stacking them in racks. Claimant had difficulty packing and stacking the racks of bread because the belt moved fast and the racks of bread had to be stacked 14 racks high, and claimant was not tall. However, claimant was satisfied with his ability to pack muffins.

(3) On April 22, 2017, the employer assigned claimant to work packing hamburger buns. Claimant felt the conveyor belt was running "crazy fast," and the belt kept "backing up" with buns. Audio Recording at ~ 12:28, ~13:37. Claimant asked his lead for assistance and the lead showed claimant some techniques to perform his work more rapidly. Claimant tried using those techniques, but the conveyor belt continued to "back up." The employees working on claimant's production line were dissatisfied with claimant's work, but claimant's lead did not say he was dissatisfied with claimant's work. Claimant's back, hands and wrists hurt from bending and stacking trays. Claimant did not tell his lead about his physical discomfort.

(4) The employer had a human resources department. Claimant did not discuss his concerns about his work performance or physical discomfort with human resources.

(5) On April 22, 2017, claimant quit work at his lunch break because he felt he was unable to perform the work in a satisfactory manner and because he had back, hand and wrist pain from the constant physical labor.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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). 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 her employer for an additional period of time.

In order for claimant to establish good cause for quitting work, he must show that he quit work under circumstances that were “grave.” “Grave” is defined, in pertinent part, as “meriting serious consideration,” “likely to produce great harm or danger” or “significantly serious.”¹ Claimant felt that the work he was assigned was “something he couldn’t do” because he was unable to keep up with the pace of the conveyor belt, and his coworkers were dissatisfied with his pace. Audio Recording at ~ 15:07. However, although claimant was dissatisfied with his performance, his slow pace after working less than five days was not grave because it was not “significantly serious” or “likely to produce great harm or danger,” especially when his lead did not reprimand him or say he was dissatisfied with claimant’s work. Thus, to the extent claimant left work because he was not able to work at the same pace as his coworkers on his fifth day of employment, claimant quit his job without good cause.

Claimant also quit work because he had back, hand and wrist pain from the constant physical labor. Again, claimant failed to show that he faced a situation of such gravity that he had no reasonable alternative but to quit work when he did. Claimant did not show that it would have been futile to tell his lead or human resources that he felt pain from the work he was performing, thus providing the employer an opportunity to address claimant’s concerns through additional training, modifications, or work assignments. Because claimant had the reasonable alternative of doing so, to the extent claimant left work due to pain caused by his work duties, claimant left work without good cause.

We conclude that claimant quit work without good cause. He is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 17-UI-89253 is affirmed.

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

¹ <https://www.merriam-webster.com/dictionary/grave>

DATE of Service: August 29, 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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