

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0963

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 12, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121148). Claimant filed a timely request for hearing. On July 19, 2017, ALJ Wyatt conducted a hearing, and on July 26, 2017 issued Hearing Decision 17-UI-88932, affirming the Department's decision. On August 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. The employer submitted written statements from two of claimant's coworkers, but did not explain why it did not present this information during the hearing or otherwise show that it was prevented from doing so by factors or circumstances beyond its reasonable control as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the employer's new information when reaching this decision.

FINDINGS OF FACT: (1) Dominos employed claimant as a deliver driver from sometime around January or February 2017 until May 11, 2017.

(2) When claimant began working for the employer, he was assigned to its Willamette Street location. Claimant disliked the shifts he had at that location and thought they interfered with his personal life. In particular, claimant did not like working the closing shift and then working the opening shift the next day. Claimant also did not get along with the manager at the Willamette Street location. Sometime around the end of April 2017, the employer agreed to, and did, transfer claimant to its Coburg Road location. After this transfer, claimant sometimes felt the employer expected too much of him and that the job was stressful. Claimant also thought the employer had not provided adequate training to him and was dissatisfied with the amount of his earnings.

(3) On May 11, 2017, claimant took an unusually long time to complete some pizza deliveries. When claimant returned to the workplace, he was "irritated." Audio at ~8:00. Claimant told the manager that he was not happy working for the employer and was considering looking for another job. Claimant told the manager that day was probably going to be his last day. The manager interpreted claimant's

statements as meaning that he was quitting. The supervisor for the employer's stores was informed of what claimant had said and sent a text message to claimant's manager telling him to collect the pizza money that claimant had received and to thank claimant for his work. The manager did so. Although claimant had an "open" and good working relationship with the supervisor, claimant did not attempt to contact the supervisor and tell her that his intentions had been misunderstood and he had not intended to quit work that day. Audio at ~28:38.

(4) On May 11, 2017, claimant left the workplace and did not return thereafter.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Claimant contended that he never told the employer definitively that he was quitting on May 11, 2017, and that he thought the employer "fired" him that day when the manager took the pizza money and thanked him for his services. Audio at ~12:08. In contrast, the employer contended that, upon questioning by his manager, claimant clearly stated that May 11, 2017 was going to be his last day working and that he was quitting. Audio at ~22:12, ~32:05. Therefore, the first issue this case presents is the nature of the work separation. If claimant could have continued to work for the same employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the same employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Claimant never contended any employer representatives ever directly told him he was "fired," "terminated," discharged or the like. Claimant also provided no reasons to explain why the employer would have discharged him on May 11, 2017 or why the manager and the supervisor would have fabricated testimony that claimant communicated an intention to leave work on May 11, 2017. Even if we accept claimant's testimony that the employer misunderstood his intentions on May 11, 2017, it does not make sense, given the nature of claimant's relationship with the supervisor, that he would not have immediately contacted the supervisor to correct such a misunderstanding, if his intentions had truly been misunderstood. Audio at ~28:38. Because claimant did not react as would have been expected had the employer misunderstood him, it appears most likely that he meant to quit on May 11, 2017 by the statements he made. The preponderance of the evidence in this record shows that claimant's work separation was a voluntary leaving on May 11, 2017.

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.

From this record, it can be discerned that claimant had general concerns about the amount of his earnings and was on occasion frustrated by his schedule, his job duties, job pressures and the lack of

training he perceived. However, nothing that claimant described in connection with these concerns constituted an objectively grave reason to leave work. Moreover, claimant did not assert or suggest that any grave harm accrued to him from the circumstances that gave rise to those concerns. On this record, claimant did not meet his burden to show that no reasonable and prudent person in his position would have continued to work for his employer for an additional period of time.

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-88932 is affirmed.

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

DATE of Service: August 30, 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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