

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0965

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83115). Claimant filed a timely request for hearing. On July 31, 2017, ALJ Janzen conducted a hearing and issued Hearing Decision 17-UI-89266, affirming the Department's decision. On August 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) A & R Spada Farms, LLC employed claimant as a propagation manager from September 22, 2014 to May 10, 2017.

(2) Prior to accepting the job, the owner told claimant he might work "some Saturdays." When claimant asked the owner what he meant, because claimant usually spent Saturdays with his wife, the owner explained that claimant might work four to six Saturdays per year. With that understanding, claimant accepted the job.

(3) Soon thereafter, claimant discovered that the owner expected him to work most Saturdays in addition to his regular Monday through Friday shifts. Claimant learned from other employees that the owner generally expected most employees to work Saturdays unless business was slow.

(4) During the ensuing months, claimant determined that it was a struggle to get leave requests approved. On at least two occasions, management did not respond to claimant's leave requests for months. Claimant concluded that the employer's management did not care about his concerns about the need for time off.

(5) Claimant averaged about 50 hours per week, began to feel worn down and worried that he was breaking down physically and emotionally. However, claimant did not seek professional advice or bring up his concerns to a medical provider.

(6) On May 9, 2017, claimant notified the owner that he was resigning because he believed he worked too many hours and could not physically keep up with it anymore. They agreed that his last day would be May 10, when claimant resigned.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person in his circumstances would have continued to work for the employer for an additional period of time.

Claimant quit work because he believed he worked too many hours and thought he was wearing down physically and emotionally. Although claimant’s concerns were reasonable, he failed to establish that his concern over his physical and emotional health was a grave situation. His concern over his health was not so grave that he felt compelled to consult with a medical provider. Moreover, he admitted that he did not make a request for a reduction of hours to the owner. Viewing the record as a whole, claimant failed to show that no reasonable and prudent propagation manager in his circumstances would have pursued those alternatives rather than abruptly quitting work over his concerns. Because claimant failed to make that showing, he did not meet his burden to establish good cause to quit work when he did. Accordingly, claimant is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-89266 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 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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