

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1034

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 172724). Claimant filed a timely request for hearing. On August 4, 2017, ALJ Meerdink conducted a hearing, and on August 8, 2017, issued Hearing Decision 17-UI-89789, concluding claimant voluntarily left work with good cause. On August 28, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's written argument contained information that was not offered into evidence during the hearing, and did not explain why it was unable to present the information at that time or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond its reasonable control prevented it from doing so. The employer also failed to certify that it provided a copy of its written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Accordingly, under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090, EAB only considered the hearing record, which was reviewed in its entirety, when reaching this decision.

FINDINGS OF FACT: (1) Black Butte Builders, LLC employed claimant as a carpenter from April 18, 2016 to March 3, 2017.

(2) In February 2017, the relationship between the employer's owner and claimant deteriorated significantly. On February 11, 2017, the owner, claimant and other workers were on a roof when the owner directed them to lift 900-pound beams using jacks that were safe only up to a weight of 250 pounds. The entire crew, including claimant, objected, but the owner forced the crew to use the jacks. Sometime during their discussion on the roof, the owner pushed claimant backward about six feet, causing claimant to trip over a beam and nearly fall off the roof, which a coworker described as "scary." Transcript at 32, 34. On February 12, the owner demoted claimant from lead carpenter to crew carpenter and reduced his wage by \$10 per hour. On February 28, claimant made a mistake cutting a block and the owner "blew up" about the mistake and sent claimant home. Transcript at 8.

(3) On March 1, 2017, the owner and claimant were on a deck that was being worked on and claimant noticed a spacer was stuck in the decking creating an obstacle that could be tripped over. Claimant noticed the owner was beginning to sand the deck and moving backward toward the spacer and so claimant stood between the owner and the spacer attempting to get his attention to prevent him from tripping over the spacer. However, when the owner bumped into claimant, he turned and pushed claimant down, stating, “Get the fuck out of my way.” Transcript at 9-10.

(4) On March 3, 2017, claimant reported for work and asked the owner what he wanted him to do. When he replied, “fascia”, claimant requested a new saw blade to perform the job because the current blade was dull and would affect the cuts. Transcript at 13. The owner “blew up”, with veins sticking out on his neck and spitting as he was talking, using foul language, for approximately 10 minutes. Transcript at 30. Claimant then stated, “I don’t need this abuse,” and quit based on the owner’s behavior toward him, which included the two recent pushing incidents that jeopardized claimant’s safety. Transcript at 23.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work with 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) (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 the employer for an additional period of time.

As a preliminary matter, claimant and the employer’s owner disagreed regarding the facts of the incidents in question. *Cf.* Transcript at 6-13; 17-23. However, claimant’s testimony was corroborated by the testimony of another employee who was present during the incidents described. Transcript at 29-35. Absent a basis for concluding that claimant or the other employee was not a credible witness, we gave their combined testimony greater weight than the owner’s uncorroborated testimony. We therefore found facts in accordance with the testimony of claimant and his witness on matters in dispute.

Claimant quit work on March 3, 2017 due to the owner’s increasing “abuse” of him over the last month of his employment. An owner’s or supervisor’s behavior can be good cause to leave work if it is “abusive” and creates an ongoing “oppressive” work environment. *See McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimant not required to “sacrifice all other than economic objectives and *** endure racial, ethnic or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”). The owner’s angry outbursts and aggressive physical behavior toward claimant between February 11 and March 3 created a serious problem for him. The owner’s use of verbal abuse, foul language and physical intimidation to express his dissatisfaction was, at the very least, highly inappropriate and disrespectful, especially given his position of authority over claimant, and at most, a serious threat toward claimant’s safety, given the work sites where the physical outbursts occurred. On this record, claimant had no reasonable alternative

but to quit his job. Claimant could not have continued to work for the employer without continuing to work with the owner. Continuing to work with the owner meant, as a practical matter, continued subjugation to the owner's angry outbursts, physical intimidation and unsafe behavior. Under *McPherson*, an employee does not have to endure abusive working conditions merely to avoid becoming unemployed.

Claimant had good cause to quit work when he did and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Hearing Decision 17-UI-89789 is affirmed.

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

DATE of Service: September 26, 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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