

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1111

Affirmed
(*Afirmada*)
Disqualification
(*Descalificación*)

PROCEDURAL HISTORY: On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143415). Claimant filed a timely request for hearing. On August 25, 2017, ALJ Amesbury conducted a hearing, and on September 1, 2017 issued Hearing Decision 17-UI-91817, affirming the Department's decision. On September 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Willamette Building Maintenance, Inc. employed claimant from 2006 until May 16, 2017 as a janitor for one of its commercial property clients.

(2) Prior to May 16, 2017, claimant and his wife, who was a coworker, worked a six-hour shift, from 6:00 p.m. until 12:30 a.m. cleaning a customer's plant. The other janitors who worked at the plant worked an eight-hour shift from 6:00 p.m. until 2:30 a.m.

(3) On May 16, 2017, the manager brought a document for the employees to sign at the site where claimant worked. The document was regarding the customer's new key policy, and it stated that all the janitors working at that customer's plant would work from 6:00 p.m. until 2:30 a.m. because all the janitors at that site were now required to turn in the keys they used at work and leave the premises at the same time. The new policy thus required claimant and his wife to work an eight-hour shift, ending at 2:30 a.m., instead of a six-hour shift like they had worked in the past. The manager told claimant and the other employees that the customer required the janitors to sign the document.

(4) Claimant's first language was Spanish, and he did not speak or read English fluently. The key policy document was written in English. The manager telephoned claimant's daughter, who had interpreted for claimant and the manager before, and asked the daughter to interpret the document by telephone. The daughter interpreted what the manager stated regarding the document from English to Spanish.

Claimant was not satisfied that the manager had told claimant's daughter all the information in the document.

(5) Claimant asked the manager if he could take the document home and have it translated into Spanish before he signed it. The manager, who did not speak Spanish, told claimant that he had to sign the document if he wanted to continue working for the employer. Claimant was not certain that the document had been interpreted accurately, refused to sign it, and went home.

(6) Claimant did not return to work or contact the employer again. On May 17, 2017, claimant filed a claim for unemployment insurance benefits.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

Work Separation. The first issue this case presents is the nature of claimant's work separation. The employer's witness contended that claimant voluntarily left work because he was dissatisfied with the new key policy presented to him to sign on May 16, 2017 because it stated that claimant's shift would be extended two more hours, becoming an eight-hour shift ending at 2:30 a.m. Transcript at 16, 21. However, claimant contended that he did not quit, but rather, was not permitted to work unless he signed the key policy document during his shift on May 16, 2017, which he was not willing to do. Transcript at 5, 6, 8. The applicable rule states that, if at the time of the work separation, claimant could have continued to work for the employer for an additional period of time, the separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to work for the 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

Claimant asserted throughout the hearing that he did not sign the key policy document when the employer's manager presented it to him on May 16 because he was unable to read the document in English, and he wanted to take it home to have it translated before he signed it. Transcript at 8, 9, 10. However, it is undisputed that the manager told claimant's daughter what the document said, and the daughter interpreted the manager's statements for claimant. With respect to the document, claimant testified that he "didn't exactly trust it because there had been a lot of change." Transcript at 26. Despite claimant's distrust of the key policy document, it appears more likely than not that claimant was told at least the general content of the new key policy. Claimant did not present a reason, other than wanting the document translated, for refusing to sign the document. Because claimant could have continued working after May 16 if he signed the new policy, but was unwilling to do so, his work separation was a voluntary leaving of work on May 16, 2017.

Voluntary Quit. 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 failed to show that he faced a grave situation because the employer asked him to sign the new key policy before continuing to work. The manager had claimant's daughter interpret her explanation of the document for claimant, and there is no objective indication that the manager was trying to mislead claimant. Nor is there evidence that claimant, as an at-will employee, would have been inextricably bound to an agreement by signing the policy. If claimant became dissatisfied with the changes at work, he could have continued to work or quit. The employer's requirement that claimant sign the new policy did not create a grave situation for claimant. As a reasonable alternative to quitting work, claimant could have signed the policy and then had the policy translated to his satisfaction. Claimant could have later rescinded his agreement with the policy, if he felt it necessary. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have quit work instead of signing a new policy, even if he was dissatisfied with his understanding of the policy.

Therefore, we conclude that claimant quit work without good cause. Claimant does not qualify to receive unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-91817 is affirmed. *Decisión de la Audiencia 17-UI-91817 queda confirmada.*

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

DATE of Service: October 9, 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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NOTA: *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

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