

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1212

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84430). Claimant filed a timely request for hearing. On October 10, 2017, ALJ Janzen conducted a hearing, and on October 11, 2017 issued Hearing Decision 17-UI-94277, affirming the Department's decision. On October 16, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pacific Fiber Products, Inc. employed claimant from May 15, 2017 to August 25, 2017.

(2) Claimant's coworker yelled at claimant that certain things claimant did in the course of performing his duties were unsafe or could kill someone. Claimant disliked the coworker's behavior and felt it was harassment or badgering. Claimant complained about the coworker to a supervisor. The supervisor counseled claimant to directly address the coworker himself first because doing so might result in a more mutually respectful relationship than if the supervisor did it for him. The supervisor told claimant he should tell the coworker to "fuck off" and stop because the coworker was not claimant's boss. Audio recording at ~ 11:05. Claimant talked to the coworker, who said he knew he was "being a dick" to claimant, but did not stop yelling at him. Audio recording at ~ 11:20.

(3) Claimant subsequently told his supervisor about things his coworker said or did on many occasions, but he did not ask the supervisor to do anything to resolve the situation between them. By approximately July 2017 claimant felt ready to quit his job and complained again that the situation was giving him anxiety and he wanted to "punch the guy in the nose." Audio recording at ~ 11:30. The employer asked claimant to wait until Monday and they would talk to the coworker; the employer subsequently asked claimant to speak to the coworker instead. Claimant spoke with the coworker again. Although claimant felt the coworker's behavior continued, he did not ask his supervisor or human resources to intervene with the coworker on his behalf.

(4) Claimant was used to a work environment in which things were run in a certain way. He thought the employer should have intervened with respect to his coworker. Claimant was not trained about some shorthand terminology the employer used to describe safety issues, and as a result experienced a near-miss accident. He observed supervisors, whom he believed should be setting an example for employees, standing in a hard-hat area without hard hats. Shortly before claimant quit work he witnessed an equipment operator dropping product from a height in a way claimant considered unsafe. Claimant asked the supervisor why the operator was being allowed to do that. The supervisor refused to talk to claimant about it and left the room; another employee told claimant that the equipment operator was the boss's son-in-law.

(5) Claimant felt the employer's business was run "too loose" for him and that he was not a good fit. Audio recording at 23:45. Claimant felt he could not work under the conditions at the employer's business, which created anxiety for him. On August 22, 2017, claimant called his supervisor and said he was quitting work. The supervisor asked claimant if there was anything he could do to improve the situation for him and claimant said no. The supervisor asked claimant if he was quitting because of the issues with his coworker, and claimant said that was part of it but there were a lot of other things going on. Claimant and the supervisor agreed claimant would work through the end of the week. Claimant last worked on August 24, 2017; his resignation was effective August 25, 2017.

CONCLUSIONS AND REASONS: We agree with the ALJ 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 his employer for an additional period of time.

Claimant did not establish good cause for quitting work because of the situation with his coworker and his safety concerns. At the time claimant quit work, he had mentioned or complained about certain things his coworker did to his supervisor, but had not in the month or two prior to quitting asked the supervisor or human resources to intervene with the coworker on his behalf. Likewise, claimant had not mentioned his safety concerns to the employer in a meaningful way. Although claimant had concerns that complaining about the coworker would be futile because the employer had not intervened for him in the past, he did not establish that it is more likely than not true that the employer would have taken no action if claimant had actually asked that the employer intervene for him or reported to the employer that the situation was causing him such anxiety that he felt he might have to leave work over it. Although claimant had vague concerns that complaining about safety issues might cause him to experience some sort of retaliation from coworkers, claimant also admitted he had not worked for the employer long enough to know whether or not that would actually happen and did not testify that he had observed or heard of such retaliation occurring in the workplace due to safety complaints. Because he quit work without giving the employer the opportunity to meaningfully address his concerns, and,

potentially, to resolve them, and he did not show that giving that opportunity to the employer would be futile or was likely to worsen his working conditions in any legally significant manner, he did not establish that his working conditions were grave or that he had no reasonable alternative but to quit work because of them.

Claimant quit work without good cause. He is therefore disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 17-UI-94277 is affirmed.

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

DATE of Service: November 15, 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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