

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1299

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 12, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92601). Claimant filed a timely request for hearing. On October 10, 2017, ALJ Frank conducted a hearing, continued on October 25, 2017, and on October 27, 2017, issued Hearing Decision 17-UI-95604, affirming the Department's decision. On November 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Both the employer and claimant submitted written argument to EAB, but claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Both parties' written arguments contained new information, but failed to show that factors or circumstances beyond their reasonable control prevented the parties from offering the information during the hearing. Therefore, we considered only the record, in its entirety, when reaching this decision.

FINDINGS OF FACT: (1) Ochoco Lumber Company employed claimant as a saw filer from October 2001 to July 17, 2017.

(2) On June 29, 2017, claimant began working under the supervision of a new head saw filer. The new supervisor concluded that the filing section of the employer's production facility was operating inefficiently, adversely affecting production, and that a change in procedures was needed. That day, the new supervisor held a staff meeting attended by claimant and two other saw filers, and he told the group that he knew that they were trained at their jobs but that they needed to pay closer attention to their work because he believed their production and work quality were not acceptable. He added that if the situation did not improve, they would need to be retrained, and if that did not work, the employer would find alternate staff to perform the work. Audio Record (October 25 hearing) ~18:30 to 19:45.

(3) The following week, claimant went on vacation. During that week, the new supervisor instituted some changes in the work flow in claimant's section. The changes worked out well and improved production.

(4) On July 10, 2017, claimant returned from his vacation week and the new supervisor showed him the changes that had been made, that they were working out well, and that he wanted claimant to implement them. Claimant essentially told the supervisor that the changed procedure would take him a lot of additional time and slow him down. The supervisor told claimant not to worry about the time needed and to simply implement the changed procedure.

(5) On July 13, 2017, the supervisor again met with claimant to discuss the new procedure and provided suggestions for making it easier for claimant to implement. He also told claimant that the employer was hiring a new apprentice that he wanted claimant to train. Claimant became upset and decided that he “could not take it any longer.” Audio Record (October 25 hearing) ~14:00 to 14:45. He went to a manager, Joe, who told claimant to do what he was told but that he would speak to the new supervisor on claimant’s behalf. However, claimant did not wait, went back to the new supervisor and told him that he disagreed with the changes and asked the supervisor to either fire him or lay him off. The supervisor responded that he could not and would not do that because he valued claimant’s extensive experience. Claimant responded that he felt sick and was leaving for the day. The supervisor asked claimant to call him the next morning to let him know if he was coming in. Claimant did not come in the next day, a Friday, and did not call the supervisor.

(6) On Monday, July 17, 2017, claimant spoke with both the department and plant managers and asked them to fire him or lay him off. After they refused, claimant spoke to the human resources manager and told her he was quitting because he “could not work with the new head saw filer” because they could not get along. Audio Record (October 25 hearing) ~32:00 to 35:00.

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 with the employer after concluding that he “could not work with the new head filer” because they did not get along. Claimant did not agree with the changes that were being implemented and thought that the supervisor’s conduct toward claimant amounted to “harassment.” Audio Record (October 25 hearing) at 16:00 to 18:00. However, claimant failed to meet his burden to show a reasonable and prudent saw filer of normal sensitivity, exercising ordinary common sense in his circumstances, would have concluded his circumstances were so grave that he had no reasonable alternative but to quit work when he did. Viewing the record as a whole, although claimant may have viewed his supervisor’s disclosure that he intended to hire an apprentice saw filer as a threat to his employment, his new supervisor assured him that he valued his experience, and wanted him to remain on the job and help train the new apprentice. Moreover, the employer’s department and plant managers refused to lay claimant off, presumably because there was plenty of work available. Although claimant

did not believe he could get along with the head saw filer, he also essentially refused the department manager's offer to intervene and speak with his supervisor about claimant's apparent difficulty with the new procedure and supervisor's style of management.

At minimum, a reasonable and prudent saw filer who was interested in remaining employed, knowing that the employer had no apparent intention of letting him go, would have attempted to adapt to the new procedures being implemented and get along with his supervisor as best he could rather than quit abruptly. Viewing the situation described objectively, although claimant may have been uncomfortable working with his new supervisor, such personality conflicts are not unusual in the work place and claimant failed to show that the conflict was so extreme that no reasonable and prudent person in his circumstances would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-95604 is affirmed.

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

DATE of Service: December 11, 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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