

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0338

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133623). Claimant filed a timely request for hearing. On March 21, 2018, ALJ Hall conducted a hearing, and on March 22, 2018, issued Hearing Decision 18-UI-105686, affirming the Department's decision. On April 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument on April 9, May 2 and May 4, 2018 each of which contained information that was not offered into evidence during the hearing, and claimant did not explain why he 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 his reasonable control prevented him from doing so. Moreover, the deadline for parties to file written argument in this case was April 30, 2018 and claimant's last two arguments did not meet that deadline. See OAR 471-041-0080 (October 29, 2006). Accordingly, under OAR 471-041-0080 and OAR 471-041-0090, EAB only considered the hearing record and claimant's April 9 written argument to the extent it was based thereon, when reaching this decision.

FINDINGS OF FACT: (1) Hansen Architectural Systems, Inc. employed claimant as a CAD technician and project manager from July 5, 2016 to approximately June 21, 2017.

(2) Beginning around March 21, 2017, claimant noticed "a weird smell" he believed was coming from the hallway outside his office or the lunchroom located across the hall from his office and so he began to close his office door to keep the smell from entering his office. Exhibit 1. The employer's CEO, also the owner, noticed that claimant's door was often shut and inquired why. When claimant responded that he had closed his door due to the "weird smell", the CEO responded, "Let me know if we need to deal with lunch room trash more frequently or something else." Exhibit 1. Claimant never responded to the CEO's offer.

(3) “Practically every day for weeks” after March 21, 2017, claimant noticed that a coworker appeared to be walking back and forth past his office door waving a piece of paper that created an odor that bothered claimant. Claimant began to use air freshener and a fan to blow the air out of his office and combat the smell. Claimant did not report the coworker’s conduct or the fumes to the CEO.

(4) A few days before April 6, 2017, claimant noticed that an odor he believed was toxic now seemed to be coming from cabinets in his office. Rather than immediately open the cabinets to determine the source of the fumes, claimant decided to wait until the end of the day. However, minutes later, claimant observed another coworker enter his office, open the cabinets in question and select a file that appeared to have a bulge in it and walk out of his office. A day or two later, claimant observed substantially similar conduct – a weird smell that appeared to be coming from cabinets in his office followed by another employee opening the cabinet, pulling out a file that appeared to have a bulge in it and walking out of the office with the file. Claimant suspected that his coworkers were creating the smell intentionally to harass him for an unstated reason, but claimant did not look in the cabinets, or report his coworkers’ conduct or the suspected toxic fumes to the CEO.

(5) On April 6, 2017, claimant noticed that the fumes coming from his cabinets appeared to be much stronger. He became nauseated and ill, his heart began to beat rapidly and he experienced pain in his left shoulder to the extent that he could not move his left arm. At about that time, the employer’s CEO came to claimant’s office to discuss a project claimant was working on and noticed that claimant did not appear to be feeling well due to claimant’s report of “some kind of a smell in his office.” Audio Record ~ 35:00 to 36:00. Although the CEO did not smell any odor, he asked claimant if he thought he needed urgent medical care which claimant declined, stating that he thought he would feel better if he could “just lay down for a little bit.” *Id.* The CEO offered claimant the use of a couch in a nearby suite, which offer claimant accepted. After resting for about thirty minutes there, claimant decided to go home. He stayed off work for a few days before returning to work, following which, he personally and continually experienced the same odors and fumes for weeks. No other employees reported any experience regarding odors of fumes to the CEO.

(6) At the end of May, 2017, claimant concluded that his coworkers, including the CEO, intentionally created the fumes to harass him for unstated reasons. He gave the CEO approximately thirty days’ written notice that he was quitting work without mentioning any reason for quitting in his notice. On June 21, 2017, claimant quit work “due to toxic fumes that was making [him] extremely ill.” Audio Record ~ 8:30 to 9:00. However, claimant never sought medical attention for any symptoms he experienced.

(7) The CEO sold the employer’s business shortly after claimant quit and the purchaser conducted a safety inspection of the facility prior to its purchase. The safety inspection did not result in a report of any dangerous conditions on the employer’s premises.

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) (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.

Claimant testified that he quit work “due to toxic fumes that [made him] extremely ill” that he suspected had been intentionally caused by coworkers, including the CEO. However, claimant did not assert or show that he ever sought any medical attention for his symptoms, despite the CEO’s offer of urgent care on April 6, and never raised the issue of potential harassment or toxic fumes with the CEO other than mentioning a “weird smell” to the CEO on March 21 and April 6, 2017. On this record, claimant did not address any potentially relevant issue to what he was experiencing with the CEO despite the CEO’s offer on March 21, 2017 to “let me know if we need to deal with lunch room trash more frequently or something else.” Viewed objectively, that alternative was reasonable, given that the CEO had demonstrated both concern for claimant’s well-being and a willingness to implement some accommodation for claimant based on what claimant had experienced, and claimant did not show that it would have been unreasonable or futile to pursue it before resigning.

Accordingly, we conclude that claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 18-UI-105686 is affirmed.

J. S. Cromwell and S. Alba;
D. P. Hettle, not participating.

DATE of Service: May 8, 2018

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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