

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0392**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124940). Claimant filed a timely request for hearing. On April 2, 2018, ALJ Shoemake conducted a hearing. On April 9, 2018, the ALJ issued Order No. 18-UI-106916, affirming the Department's decision; on April 12, 2018, the ALJ issued Amended Order No. 18-UI-107194, re-affirming the Department's decision. On April 12, 2018, claimant filed an application for review of Amended Order No. 18-UI-107194 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision, to the extent it was based upon the hearing record.

**FINDINGS OF FACT:** (1) Reinhart Construction Inc. employed claimant as a truck driver and equipment hauler from January 9, 2018 to February 9, 2018.

(2) From the beginning of claimant's employment, he felt the foreman regularly stared at him "with an evil look." 13:20. Claimant did not know the reason the foreman looked at him that way, whether the foreman disliked him or if that was just the foreman's personality. Claimant did not notify the owner or office manager that he was concerned about the way the foreman looked at him.

(3) On February 9, 2018, the site foreman looked at claimant "with an evil eye" after claimant moved an excavator. Audio recording at ~ 8:50. Claimant "threw up his hands" wondering what was wrong, and the foreman started "swearing at" claimant, using the "f" word, and asking him about moving the excavator. Audio recording at ~ 9:00. Claimant felt upset, and thought the foreman was being hostile. He did not want to "do something stupid" like punch the foreman, and decided to leave the job site. Audio recording at ~ 9:25.

(4) Claimant called the employer's owner immediately after leaving the job site. Claimant explained that the foreman swore at him and he did not know why, and said that he was "done" with the foreman. Audio recording ~ 19:00; 25:00. The owner gave claimant other tasks to do at a different job site.

Claimant thought the tasks were at the same job site and refused; claimant said he was “done” with the foreman and was walking to his car. Audio recording at ~ 19:10. The owner thought claimant had quit at that point, but said he would call the foreman.

(5) Claimant thought the owner would call him back after he spoke with the foreman. Claimant waited a few minutes for the owner to call him, and when he did not receive a call he walked to his car and went home. Claimant was too upset to operate truck, and he was not willing to return to the job site while he and the foreman were upset. Claimant did not call or speak with the owner again thereafter.

(6) Claimant stopped at the office to drop off his paperwork on his way home. He asked the office manager if she had heard from the owner or foreman, and she said she had not. Claimant told the office manager what happened and that he was “done” working with the foreman. Audio recording at ~ 29:55.

(7) After leaving the office, claimant did not contact the employer again to ask what the foreman had said, or ask about returning to work. At all relevant times, the employer’s owner had not told claimant he was discharged, fired, laid off, or “done,” or otherwise imply that claimant was not welcome to return to or continue working.

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

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant chose to leave the job site, and, when he did not hear from the owner again after the initial February 9<sup>th</sup> call or receive information about his situation from the office manager, claimant did not return to the job site, contact the employer, or express an interest in continuing to work. Claimant chose his course of action, and was not told by the owner, foreman or office manager that he was discharged, “done,” or otherwise was not welcome to return to work, and the mere fact that the owner did not call claimant back within a few minutes after the initial February 9<sup>th</sup> call did not reasonably suggest that the employer no longer had work available for claimant. The record therefore shows that claimant reasonably could have continued to work for the employer for an additional period of time after February 9<sup>th</sup>, and his work separation was a voluntary leaving.

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). 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 quit work because the foreman looked at him “with an evil eye” and used the “f” word to him on February 9<sup>th</sup>, after a month of feeling as though the foreman was giving him “evil looks” or might dislike him. Claimant was understandably concerned about the hostility he perceived from the foreman. However, the foreman had never before spoken to claimant in such a manner, and claimant had never before reported the foreman’s “evil” looks to the employer’s owner or office manager. When, on February 9<sup>th</sup>, claimant did finally complain to the owner, he immediately told the owner he was “done” working with the foreman without giving the owner a chance to resolve his concerns, then gave the owner only a few minutes to respond to his concerns before leaving work. Later on February 9<sup>th</sup> claimant again told the office manager he was “done” with the foreman without giving her the opportunity to investigate his concerns about the foreman’s behavior. Claimant’s concerns about the foreman’s “evil” looks and use of the “f” word on February 9<sup>th</sup> did not amount to a situation of such gravity that claimant had no reasonable alternative but to quit work without giving the employer the opportunity to investigate and resolve his concerns. Claimant therefore quit work without good cause, and is disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Amended Order No. 18-UI-107194 is affirmed.

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

**DATE of Service:** May 10, 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](http://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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