

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0595**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 26, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 105445). Claimant filed a timely request for hearing. On May 22, 2018, ALJ Schmidt conducted a hearing, and on May 24, 2018 issued Order No. 18-UI-110053, affirming the Department's decision. On June 13, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006). However, claimant's argument also contained new information that he did not offer into evidence at the hearing. In his argument, claimant asserted that the ALJ did not allow him a reasonable opportunity to offer the information into evidence because the ALJ did not conduct a full and fair inquiry into information contained in claimant's documents, which were admitted into evidence as Exhibit 1, or call claimant's other potential witnesses to testify.<sup>1</sup> However, our review of the record shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). When the ALJ asked claimant if his other potential witnesses had any information to add to his testimony, claimant stated that they did not, except that they would corroborate his testimony that his co-manager was not working the number of hours required by the employer. Transcript at 35. However, whether claimant's co-manager was working the required number of hours is not material to our determination of whether claimant had good cause to quit working for the employer. Thus, to the extent, if any, the ALJ

<sup>1</sup> ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); OAR 471-040-0025(1); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986).

erred in not calling claimant's witnesses, it did not substantially prejudice claimant's rights and therefore was not reversible error.<sup>2</sup>

**FINDINGS OF FACT:** (1) Paradies My-Reo LLC, employed claimant as a human resources assistant general manager from October 24, 2016 to April 5, 2018.

(2) On or about June 2017, claimant reported to his supervisor that he believed that his co-manager, a member of their management team, was not working the required number of hours, in violation of the employer's time theft policy. Shortly after claimant reported this behavior to his supervisor, the co-manager yelled at claimant and blamed him for scheduling problems in front of other employees. Claimant's supervisor addressed the incident, but not to claimant's satisfaction.

(3) In the next few days, claimant felt that the co-manager would not interact with him. Claimant believed that the co-manager's behavior was retaliatory. Claimant reported the behavior, including the time theft, to the employer's regional director. Claimant did not report the behavior to human resources because he believed that a formal investigation would probably have resulted in the co-manager's termination. Although the regional manager met with claimant and the rest of his management team and addressed claimant's concerns, claimant felt that no corrective action was taken against his co-manager, but the team instead was counseled to find a way to work together.

(4) In February 2018, two employees complained to claimant about what they perceived as harassment by the co-manager and the supervisor. Claimant reported the complaints to the employer's regional human resources manager. Claimant's supervisor had also notified the regional manager and human resources of the situation. The matter was investigated, and on or about February 20, 2018, the regional director and the human resources manager met with claimant and the rest of his management team. During the meeting, the management team received a verbal coaching because the employer believed that the team was not working in a cohesive way. On February 21, 2018, claimant and his management team also received a written verbal counseling finding that their team was not functioning as a cohesive team, and lacked trust, leadership and respect. Claimant believed that his inclusion in the group's corrective action was retaliatory for the harassment claim he reported against the co-manager and the supervisor.

(5) The employer determined its employees' annual raises based on annual performance reviews. The March 2018 review was claimant's first review. Claimant expect to receive higher marks on his review than he received, but he did not disagree with the critiques in the review. Claimant's supervisor explained to claimant that the reason for his evaluations marks were a result of the team not having reached its "stretch goal." Transcript at 28.

(6) On March 23, 2018, claimant learned that he had received a 2 ½ percent pay increase based on his performance evaluation marks. Claimant had expected a 3 ½ to 4 ½ percent increase. On March 25, 2018 claimant confirmed that all the members of his management team had received the same raise and that it was consistent with raises they had received in the past ten years. Claimant quit his job because he felt that he did not receive the raise he merited and interpreted the raise as further retaliation for

---

<sup>2</sup> See OAR 471-040-0025(5) (Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party).

reporting his co-manager and supervisor for harassment. On March 25, 2018, claimant tendered his resignation to the employer, effective April 5, 2018.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit working for the employer 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 quit work, in part, because he believed that the pay increase he received in March 2018 was below what he merited and showed a lack of appreciation for his past performance. Exhibit 1. At hearing when asked whether he would have continued working for the employer if he had received a 3 percent or higher pay increase, claimant replied, “I would have worked until I found a different job, assuming that the two issues that I called out remained unchanged.” Transcript at 23. However, claimant failed to establish that continuing to work for the employer substantially interfered with his ability to search for other work, or that quitting work improved his financial situation in any way. Absent such showings, we cannot find that no reasonable and prudent person in claimant’s situation would have continued to work for his employer for an additional period of time.

Claimant also quit work, in part, because he believed that his recent performance evaluation marks, his pay increase, and being included in the corrective action with his management team, were retaliatory for having reported members of his management team for harassment. Exhibit 1. Transcript at 7, 19-23. However, since claimant’s supervisor self-reported the February 2018 incident to the regional manager and human resources, one cannot say that the evaluation marks given to claimant by the supervisor were retaliatory for claimant’s reporting of the supervisor. In addition, given that the managing team all received the same pay increase and claimant did not disagree with the critiques in his performance review, one cannot conclude that claimant’s raise or his review were due to retaliation. Finally, in light of the fact that the investigation found that the managing team lacked cohesion, trust, leadership and respect, a corrective action directing the managing team, including claimant, to work together cannot be found to be retaliatory. Viewed objectively, claimant’s perceived retaliation was not such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit work, especially without having brought the concerns to the regional manager or to human resources.

Claimant quit work without good cause, and therefore is disqualified from receiving benefits based on his work separation from the employer.

**DECISION:** Order No. 18-UI-110053 is affirmed.

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

**DATE of Service: July 19, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.