

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0626**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 102746). Claimant filed a timely request for hearing. On June 12, 2018, ALJ Schmidt conducted a hearing at which the employer did not appear, and on June 15, 2018 issued Order No.18-UI-111439, concluding claimant voluntarily left work without good cause. On June 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted to EAB a W-2 tax form for 2017 that he received from an employer subsequent to Zenisco, his employer at the time of work separation at issue in this proceeding. Because the W-2 form is not relevant to the reasons that claimant voluntarily left work with Zenisco, and claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering the W-2 form into evidence during the hearing, EAB did not consider it when reaching this decision. *See* OAR 471-041-0090(2)(October 29, 2006).

**FINDINGS OF FACT:** (1) Zenisco employed claimant as a cell tower top hand from approximately the first week of August 2017 until approximately August 29, 2017. Claimant had been performing work as a tower top hand for some time before the employer hired him.

(2) Claimant climbed to the top of cell phone towers to perform work. During the three weeks claimant worked for the employer, claimant disagreed on several occasions with his foreman over the need to take certain safety precautions. Claimant complained to the foreman that the foreman was not implementing adequate practices to protect his and other workers' safety. As of August 29, 2017, claimant had decided to give the employer and the foreman additional time to improve safety practices.

(3) On August 29, 2017, after having completed a task, claimant was on top of a cell phone tower waiting for further instructions from the foreman. After some delay, the foreman finally reached claimant and told claimant he had been trying to contact him for some time, but claimant had not responded. The foreman was irritated with claimant and asked him if he had been sleeping on the job or was under the influence of drugs. Claimant demanded that the foreman allow him to take a drug test,

which the foreman refused. The foreman then told claimant to go home, although it was only early afternoon and claimant's work day was not yet over. Claimant did so.

(4) After arriving at his house on August 29, 2017, claimant decided that he no longer wanted to deal with the foreman. Claimant then called other potential employers about available work as a top hand on cell phone towers and learned that such work was available. Claimant decided that he was going to quit work for the employer since he likely would be able to secure new employment doing the same work that he had done for the employer.

(5) In the early evening of August 29, 2017, the project manager called claimant about the next day's work. Claimant told the project manager that he was "having issues" with his foreman and that he was thinking about quitting. Audio at ~18:49. The project manager told claimant it "might be best" to quit. Audio at ~18:49. Claimant then told the project manager that he was leaving work, effective immediately. At the time claimant notified the project manager of his decision to quit, claimant had not received a job offer from any new employers. Claimant decided to leave work when he did because he did not want to continue "butting heads" with the foreman, he was dissatisfied with the steps the employer took to ensure the safety of workers, and he thought that he would be able to readily secure new employment. Audio at ~25:31. On August 29, 2017, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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) (January 11, 2018). 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. A claimant who leaves suitable work to seek other work has left work without good cause. OAR 471-030-0038(5)(b)(A).

That claimant disliked "butting heads" with the foreman he worked under does not, without more, appear to constitute a grave situation. Many employees work under difficult supervisors with whom they do not get along or do not like, and most do not leave work over it. Claimant did not describe any behavior by the foreman that could reasonably be characterized constituting a type of abuse or oppression that might give rise to good cause for leaving work. *See e.g., McPherson v. Employment Division*, 285 Or 541, 557, 591 P2d 1381 (1979) (claimants not required to "sacrifice all other than economic objectives and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits).

While claimant pointed out that he had developed concerns over safety during the short time he worked for the employer, he was very definite that as of August 29, 2017, he was not going to quit work over them, but was going to "give [the employer] an opportunity to meet my [safety] demands." Audio at ~22:04. Since claimant was otherwise willing to give the employer additional time to improve its safety practices, it does not appear that they constituted a grave situation at the time he left work and, by his

own admission, it does not appear that he exhausted the reasonable alternative of allowing the employer to respond to his complaints about safety before deciding to leave work. As such, as of the time he left work, claimant did not have good cause to do so as a result of his stated safety concerns.

Finally, while claimant might not have decided to leave work unless he thought he was assured of readily securing new employment, he did not show that working for the employer was not suitable for him based on his training and experience or the compensation that he was receiving. *See* ORS 657.190. As such, claimant's belief that he would be able to obtain prompt employment working on cell towers after he left employment with the employer was not sufficient to establish that he had good cause for leaving work when he did because he did not show that the work he performed for the employer was not suitable. On this record, claimant did not prove that he had good cause for leaving work when he did.

Claimant did not show that he had good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-111439 is affirmed.

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

**DATE of Service:** July 20, 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.