

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0819

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 121148). Claimant filed a timely request for hearing. On August 9, 2018, ALJ Frank conducted a hearing at which the employer did not appear, and on August 17, 2018, issued Order No. 18-UI-115167, affirming the Department's decision. On August 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Forest River Manufacturing LLC employed claimant as worker in Oregon manufacturing trailers from June 10, 2018 until June 19, 2018. Claimant earned \$10.25 per hour, which was minimum wage in Oregon.¹

(2) At hire, claimant understood he would work as a welder. However, the employer assigned him to perform various assembly duties in the manufacturing process. Claimant did not like performing duties other than the welding he thought he would be performing.

(3) Claimant was 51 years old. It was difficult for claimant to perform duties as physically demanding as those required in the assembly tasks to which the employer had assigned him. Claimant's coworkers were younger than him, referred to him as an "old man" and would state to him, when he was working, "What's wrong old man, hurry up [and] do this and do that." Audio at ~13:56. Although claimant disliked his coworkers making such comments, he did not complain to the employer. Claimant also did not speak to the employer about the physical demands of his assignment because he did not think doing so would have any impact on it.

(4) On Monday, June 18, 2018, claimant attended a staff meeting in which a supervisor announced that because employees had been making too many mistakes in the manufacturing process, the employer planned to start deducting the costs of such mistakes from employees' paychecks. Claimant thought such deductions would be unlawful. Sometime after the meeting, claimant spoke to a human resources

¹ www.oregon.gov/boli/WHD/OMWages/Minimum-Wage-Rate-Summary.aspx

representative about the unlawfulness of the employer's proposed deductions from employees' paychecks. The representative told claimant she had heard the same thing from other employees and that she "going to be looking into it." Audio at ~15:55.

(5) On June 19, 2018, claimant voluntarily left work because he disliked the work he was performing and thought it was too physically demanding, his coworkers referred to him as an old man, and he thought the employer was going to start deducting the costs of mistakes from employees' paychecks.

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.

Claimant cited several reasons that contributed to his decision to leave work after being employed for only one week. Each reason is considered in turn. First, while claimant may have disliked that he was not performing welding work, he failed to show that the employer's failure to assign him to welding created a situation of gravity for him. Second, while claimant might have found the physical requirements of the assembly work to which he was assigned objectionable, he did not contend that the work was beyond his physical abilities or that any significant or grave harm accrued to him from performing it. Third, while claimant might have disliked his coworkers on occasion referring to his age or calling him "old man," he did not complain to the employer about them doing so. Since claimant did complain to the employer about those concerns, and there is insufficient evidence on which to find that it would have been futile for claimant to do so, claimant failed to show that he had no alternative but to leave work when he did as a result of those concerns.

Finally, with respect to the deductions the supervisor alluded to at the June 18, 2018 staff meeting, they likely would have been unlawful if the employer actually implemented them. *See* OAR 839-020-0020(6) (January 9, 2002) (prohibiting deductions from employees' wages for loss or breakage during work). However, when claimant voiced his concerns about the proposed deductions to the human resources representative, it appeared from her comments that there was a reasonable chance she would take steps to inform the employer that its proposal might be unlawful and ensure that the employer reversed course if it was determined to be unlawful. Because the employer had not yet implemented the deductions, and given human resources representative's response, claimant did not show that the proposed deductions constituted a grave circumstance at the time he decided to leave work.

Claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-115167 is affirmed.

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

DATE of Service: September 25, 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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