

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0998

Reversed
Disqualification

PROCEDURAL HISTORY: On August 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95433). Claimant filed a timely request for hearing. On September 18, 2018, ALJ Shoemake conducted a hearing, and on September 24, 2018 issued Order 18-UI-117096, reversing the Department's decision. On October 15, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Ulven Companies employed claimant from February 18, 2008 until June 18, 2018, last as a millwright and having the responsibilities of an environmental health and safety manager.

(2) Sometime before June 18, 2018, claimant began acting as the employer's environmental health and safety manager in addition to continuing to perform duties as a millwright. Later, the employer hired a new maintenance manager. It appeared to claimant that the new maintenance manager was acting in many ways as the employer's safety manager. Some of claimant's coworkers told him that he was no longer in charge of safety.

(3) A few days before June 18, 2018, claimant asked an employer representative for clarification of his job responsibilities and if the employer expected him to continue acting as environmental health and safety manager in addition to performing duties as a millwright. Claimant also wanted clarification as to whether the employer intended to give him a raise if he continued to work both as a millwright and as a manager. Claimant did not think the employer's responses to his inquiry were adequate, and he requested an in-person meeting with members of the employer's management.

(4) On June 18, 2018, claimant met with the employer's chief operating officer (COO) and the manager of human resources to discuss his job duties and compensation. At the meeting, the COO and human resources manager told claimant that the employer wanted him to continue performing both jobs, that of millwright and of manager of environmental health and safety. Claimant told the COO and the

manager that if the employer did not increase his pay to a level that took account of him performing in both capacities, he did not intend to continue working for the employer. The employer representatives told claimant that the employer would not give him a raise. Claimant responded, "That's fine" and then stood up, said he was "done" and thanked the employer representatives for meeting with him. Audio at ~10:04, ~26:35, ~27:17, ~28:00. As claimant prepared to leave, the human resources manager commented to him, "Really Mike? That was quick." Audio at ~10:20. At that point, claimant left the office and went to the shop to gather together his personal belongings to take home. While claimant was in the shop, the employer's operations manager came to the shop and asked claimant to give his work keys to the manager. The Claimant did so.

(5) On June 18, 2018, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

In Order No. 18-UI-117096, the ALJ concluded that claimant's work separation was a discharge, and that claimant was not disqualified from benefits because the employer did not show that it discharged him for misconduct. As to the work separation, the ALJ relied heavily on the fact that claimant did not say that he "quit" during the June 18 meeting, the inference that "the employer assumed claimant was quitting work because of how quickly he ended the [June 18] meeting," and on the reasoning that had claimant quit during the meeting, "it is more likely that the employer would have asked for his work key at that time [during the meeting]. Order No. 18-UI-117096 at 2. The ALJ further reasoned that "[w]hen the general manager asked claimant for his work key [after he left the June 18 meeting and had returned to the shop], the employer effectively discharged claimant." Order No. 18-UI-117096 at 2. We disagree that the evidence shows the work separation to have been a discharge rather than a voluntary leaving. We also disagree that claimant is not disqualified from benefits because we conclude that he did not demonstrate that he had good cause for leaving work when he did.

OAR 471-030-0038(2) (January 11, 2018) sets out the standards for characterizing the work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (January 11, 2018). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Claimant did not contend that the employer clearly expressed an intention to end the work relationship during the June 18 meeting by, for example, telling claimant he was discharged, fired, terminated or the like. The employer did not contend that claimant expressed his intention to leave work by saying he was quitting or the like. However, claimant had requested the June 18 meeting with the COO and the human resources manager for the purpose of ironing out his job duties and the compensation he would receive for performing them. Rather than denying that he told the COO and human resources manager at the meeting that he was going to leave work if the employer did not give him a raise, claimant appeared to testify that he might have issued such an ultimatum to them. Audio at ~ 32:10. Viewed against this backdrop, when the COO and the manager told claimant that, although the employer wanted him to continue working in two capacities, it was not going to give him a raise and immediately thereafter claimant stood up, stated that he was "done," shook hands with and thanked the COO and the manager, the most reasonable interpretation of claimant's behavior was that he intended to and was quitting work effective immediately by that statement and those actions. In addition, given that it was claimant who

abruptly terminated the June 18 meeting by standing up and leaving, the employer plausibly was taken aback and did not think to ask him to turn over his keys at that time, and the general manager asking him for his keys after the meeting was neither remarkable nor emblematic of the employer's intention to discharge claimant after the meeting. The preponderance of the evidence shows that by his statements and behavior at the June 18 meeting, claimant was the first party to objectively manifest an intention to sever the work relationship. Claimant's work separation was a voluntary leaving on June 18, 2018.

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.

Because claimant contended that he was discharged, he did not present any reasons for leaving work. However, claimant commented at hearing that he felt "very frustrated" and that he was being "demoted into a different position," presumably based on the employer's refusal to give him a raise. Audio at ~12:44. While claimant may have been dissatisfied and displeased by occurrences in the workplace, he did not describe anything from which it could reasonably be inferred that grave circumstances were confronting him. The record is insufficient to show by a preponderance of the evidence that claimant quit work due to grave reasons to which he had no reasonable alternative other than to leave work.

Claimant left work, but the evidence was insufficient to show that he had good cause for doing so. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-117096 is set aside, as outlined above.

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

DATE of Service: November 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. 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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