

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0129

Modified
Benefits Payable Weeks 41-13 and 42-13
Disqualification Effective Week 43-13

PROCEDURAL HISTORY: On October 30, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90857). Claimant filed a timely request for hearing. On December 27, 2013, ALJ Murdock conducted a hearing, and on January 2, 2014, issued Hearing Decision 13-UI-07483, affirming the Department's decision. On January 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kaiser Foundation Health employed claimant, last as a dental member assistant, from January 6, 1998 to October 8, 2013.

(2) Claimant was transferred to the position of dental member assistant in May 2013 when her previous job was eliminated. Claimant's coworker in her new position was often impatient, angry or demeaning towards her, sometimes in front of others, when she asked for his assistance or guidance with work tasks. She complained to her supervisor but was told to minimize her questions to the coworker and seek the supervisors help instead. However, when she did, the supervisor was either unhelpful or expressed frustration with claimant. Claimant ultimately concluded that both her coworker and supervisor subjected her to ongoing harassment and intimidation and asked her union to assist her.

(3) Prior to May 2013, claimant had never been disciplined by the employer. However by early October 2013, claimant had been "written up" twice, was at level 2 of the employer's four levels of discipline and was expected to increase her speed, reduce her errors and improve her relationships with her coworkers. Transcript at 12, 13. If an employee reached level 4 in discipline, the employee was subject to termination. Claimant felt continually stressed and applied for transfers to other positions but "nothing worked out." Transcript at 14.

(4) On October 8, 2013, claimant was scheduled to attend a meeting with the employer's human resources department and her union representative. However, her representative "did not show" for the meeting, at which claimant was notified she was going to be given a "level 3" corrective action. Transcript at 8, 9. Claimant became distraught by the employer's action and that day gave the employer two weeks' notice of her intent to quit. The employer told claimant that it did not need or want her to work her notice period and claimant's last day of work was October 8.

(5) On October 9, 2013, claimant requested that the employer rescind her resignation but the employer denied her request.

(6) Claimant was not medically advised to quit and chose not to file a grievance against the employer for the perceived harassment and hostile environment because she was afraid that if she did, the employer would retaliate by terminating her job.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct, within two weeks of a planned voluntary leaving without good cause.

ORS 657.176(2) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct or claimant voluntarily left work without good cause. "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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

ORS 657.176(8) provides:

For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The voluntary leaving would be for reasons that do not constitute good cause;
- (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and
- (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,

then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

Claimant notified the employer on October 8 that she was quitting her job in two weeks. Claimant asserted that she decided to quit because she was “stressed all the time” and her work environment was “so hostile” she could not continue. Transcript at 12. However, by agreeing to work at least two more weeks and then, on October 9, requesting that the employer rescind her resignation, claimant demonstrated that her circumstances were not so grave that she had no reasonable alternative but to quit when she did. Moreover, claimant did not assert or show that she received medical advice to quit, that she could not have filed a union grievance against the employer for the perceived harassment instead of quitting or that she could not have accepted the level three corrective action and continued to work while she attempted to improve her work performance. In short, claimant failed to show that no reasonable and prudent dental member assistant in her circumstances would have continued to work for her employer beyond October 22, 2013.

The employer discharged claimant on October 8, 2013, when it told claimant it did not need or want her to return to work after she gave notice of her planned resignation. Claimant’s discharge was not for misconduct.¹ The record fails to show any reason for the employer’s decision to discharge claimant immediately upon receiving notice of her planned resignation that is attributable to claimant as a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her. The discharge was, therefore, not for misconduct, within 15 days of claimant’s planned voluntary leaving without good cause.

Because claimant was discharged from work within 15 days of a planned voluntary leaving, under ORS 657.176(8), the work separation is adjudicated as if the discharge did not occur, and the planned leaving had. However, claimant is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. Here, claimant’s discharge occurred in the week of October 6 through 12, 2013 (week 41-13), and she is eligible for benefits through the end of the next week, October 13 through 19, 2013 (week 42-13), which is the week prior to the week of claimant’s planned voluntary leaving. Thereafter, she is disqualified from receiving unemployment insurance benefits under ORS 657.176(2) until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 13-UI-07483 is modified, as outlined above.

Tony Corcoran and D. E. Larson;
Susan Rossiter, not participating.

DATE of Service: February 19, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

¹ OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer’s interest.

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