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State of Oregon
Employment Appeals Board

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VQ 005.00

CID 47,571,087,344
CAT 622

875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0164

*Reversed
Disqualification*

PROCEDURAL HISTORY: On September 26, 2013, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding R2J2 Corporation discharged claimant, not for misconduct (decision # 141551), the other concluding that Next 142 Inc. discharged claimant, not for misconduct (decision # 145942). The employer filed timely requests for hearing. On December 3, 2013, ALJ S. Lee conducted a consolidated hearing, and on January 13, 2014 issued Hearing Decisions 14-UI-08431 affirming decision # 141551, and 14-UI-08430, concluding that claimant quit working for Next 142 Inc. without good cause. On January 24, 2014, the employer filed an application for review of Hearing Decision 14-UI-08431 with the Employment Appeals Board (EAB). On February 3, 2014, Hearing Decision 14-UI-08430 became final without an application for review having been filed.

FINDINGS OF FACT: (1) R2J2 Corporation (the employer), doing employed claimant as a server and counter person from January 29, 2011 to August 12, 2013.

(2) Claimant managed the employer's store for its co-owners, Richard and Jean Brogen. Claimant also worked at another store for Next 142 Inc., which Mr. and Ms. Brogen also owned.

(3) Toward the end of claimant's employment Ms. Brogen became more involved in managing the employer's store, which resulted in occasional conflicts with claimant. On one occasion, claimant and Ms. Brogen disagreed and argued about whether one employee could deliver 21 pizzas for the employer.

(4) Mr. Brogen allowed claimant to switch shifts with other employees on her own authority. On August 12, 2013, claimant was scheduled to start work at 11:00 a.m., but switched shifts with another employee scheduled to open the store at 10:00 a.m., and reported for work at that time. When Ms. Brogen arrived, she became angry and told claimant that she should not have switched shifts without consulting her or Mr. Brogen. Claimant and Ms. Brogen later disagreed and argued over what duties employees opening the store were required to perform. Ms. Brogen again became angry and told

claimant she had “no say in the business,” and had to listen to the owners and the employer’s corporate office. Transcript at 31.

(5) Claimant quit working for the employer because of Ms. Brogen’s behavior toward her. On November 4, 2013, claimant emailed the employer, asking Mr. Brogen if she could return to work for the employer, admitting that she made a bad choice in quitting.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit working for the employer without good cause.

OAR 471-030-0038(2)(b) (August 3, 2011) provides that if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a quit. OAR 471-030-0038(2)(a). A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting when she 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 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.

In Hearing Decision 14-UI-08431, the ALJ found as fact that the employer discharged claimant because she quit working for Next 142 Inc.¹ At hearing, however, claimant testified that she quit working for the employer prior to her work separation from Next 142 Inc. Transcript at 28, 32-35. The record clearly shows that claimant was unwilling to work for the employer after August 12, 2013, and that the employer did not prevent her from doing so. Because claimant could have continued to work for the employer for an additional period of time, her work separation from the employer was a quit, and not a discharge.

Claimant quit working for the employer because of Ms. Brogen’s behavior toward her. However, although Ms. Brogen may have been somewhat difficult to work with, claimant failed to show that her behavior was so egregious that no reasonable and prudent person would have continued to work for the employer for an additional period of time. We therefore conclude that claimant quit work without good cause, and that she is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-08431 is set aside, as outlined above.

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

DATE of Service: February 25, 2014

¹ Hearing Decision 14-UI-08431 at 1-2.

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>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.