

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0434

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 24, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82715). Claimant filed a timely request for hearing. On March 5, 2014, ALJ Micheletti conducted a hearing, and on March 7, 2014 issued Hearing Decision 14-UI-11919, affirming the Department's decision. On March 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Wendy's International, Inc. employed claimant from July 21, 2011 until August 25, 2013. Claimant last worked as a shift supervisor.

(2) On March 12, 2013, claimant filed a complaint with the employer's human resources department alleging that a manager had sexually harassed her. Claimant contended that the manager had made sexually inappropriate comments about her and had also touched her in unwanted ways. After an investigation, the employer's human resources department was unable to substantiate claimant's allegations. However, the employer transferred the manager to another one of its locations to avoid having him work in the future with claimant. Claimant had no further contact with the manager after he was transferred.

(3) On July 28, 2013, claimant learned that she was scheduled to attend the meeting at which the manager against whom she had made the sexual harassment complaint was also going to be in attendance. Claimant told the district manager that she was uncomfortable attending any meeting where the manager also was, and she asked if she could attend a second meeting at which the same topics were going to be discussed. The district manager told claimant it was "too much of a hassle" to change the meeting that claimant was expected to attend, and that claimant needed to "get over it [her discomfort about being in the same location as the manager]." Audio at ~ 5:25, ~6:34. The district manager told

claimant that her attendance at the meeting was compulsory regardless of the presence of the manager. Claimant did not complain to the human resources department about the district manager's decision.

(4) In approximately early August 2013, claimant attended the employee-wide meeting at which the manager was also present. Claimant was "very uncomfortable" at being in the same room as the manager and was "nervous." Audio at ~5:30, ~6:11, ~13:53. Although the manager did not behave in a harassing way toward claimant at the meeting, he did ask claimant, "How's it going?" when he saw her after the meeting was over and claimant perceived that the manager gave her a "very weird" smile before he walked away. Audio at ~ 5:06, ~14:14.

(5) On August 6, 2013, claimant gave the employer a letter stating she was resigning effective August 25, 2013. On August 25, 2013, claimant 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 she proves, by a preponderance of the evidence, that she had good cause for leaving work 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 P3d 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.

Claimant contended she quit work because she was required to attend a meeting at which a manager whom she had previously accused of sexually harassing her was also going to be present. Audio at ~4:16. Until that meeting, claimant had not had any interactions with the manager since the employer had transferred the manager to a different location and there were no recent incidents of alleged harassment. Audio at ~11:20. While claimant's unease at again being in the presence of the manager was understandable, the only evidence that claimant provided of why she left work was that she felt "uncomfortable" at the meeting. Audio at ~5:30, ~5:43, ~8:49, ~14:02. Employees can reasonably be expected to tolerate some unpleasant feelings in the workplace, such as discomfort, nervousness or awkwardness. A reasonable and prudent shift manager, exercising ordinary common sense, would not have concluded that a short-lived feeling of discomfort when she was in the presence of a former manager among the many employees who were also in attendance at the meeting was a grave reason to leave work. In addition, claimant had previously sought the assistance of the employer's human resources department in addressing her concerns over the manager's alleged sexual harassment and that department had responded quickly by transferring the manager to different location to avoid further contact with claimant. Claimant was reasonably aware that she could contact the human resources department to obtain an excuse from attending the meeting if the district manager had turned down her request not to attend. Claimant did not present any evidence to show that she reasonably concluded that making such a request to the human resources department would have been futile. A reasonable and prudent shift manager, exercising ordinary common sense, who believed that attending a meeting in the presence of the manager was a grave situation, would not have concluded that she needed to quit work before contacting the human resources department and determining it was unwilling to excuse her from

attending the meeting. Because claimant did not act as a reasonable and prudent person in her situation, claimant did not show good cause for leaving work when she did.

Claimant did not establish good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-11919 is affirmed

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

DATE of Service: April 4, 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>.

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.