

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0585

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On January 13, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged but not for misconduct (decision # 74203). The employer filed a timely request for hearing. On March 20, 2014, ALJ W. Lewis conducted a hearing, and on March 21, 2014 issued Hearing Decision 14-UI-13130, reversing the Department's decision and concluding claimant voluntarily left work without good cause. On April 8, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Renaissance Development Corp. employed claimant as a quality assurance administrative coordinator from May 6, 2013 until December 11, 2013. The employer was a home builder.

(2) After claimant was hired, claimant worked primarily with one field specialist who often needed to be out of the office to accomplish his work duties. The employer expected claimant to coordinate her work with that of the field specialist, particularly when customers called claimant with complaints.

(3) Throughout her employment, claimant had difficulty working with the field specialist. Claimant thought that the field specialist avoided communicating with her, and claimant was often unsuccessful in reaching him when she needed to speak with him. In June 2013, claimant told her supervisor that she was having problems communicating with the field specialist, and asked the supervisor to arrange weekly meetings between her and the field specialist so they might better exchange information. The supervisor agreed that weekly meetings might be helpful, but they never regularly occurred due to the schedules of the supervisor and the field specialist. After June 2013, claimant told her supervisor on several occasions that she was still having difficulties getting the attention of the field specialist and exchanging information with him. Over time, claimant perceived that the field specialist was treating her "disrespectfully" and in a "very condescending" way. Transcript at 21, 40.

(4) On November 13, 2013, claimant sent the field specialist an email to arrange for his participation in a house walk-through that a customer had requested. In the email, claimant told the field specialist that the customer preferred the walk-through to be scheduled for 3:00 p.m. on December 11, 2013 and asked the field specialist if that time was too late in the day for him. A sales representative who worked with the field specialist responded to the mail and told claimant that 3:00 p.m. was acceptable to the field specialist. Claimant was unhappy that the field specialist, himself, did not respond to the email. Later, the field specialist expressed to claimant that he was upset that the walk-through had been scheduled for so late in the day and told claimant that the manner in which she was scheduling appointments for him was "ridiculous." Transcript at 59-60. Claimant thought that the field specialist had treated her rudely in this communication. Transcript at 60.

(5) In approximately mid-November 2013, claimant was dealing with a customer who had complaints about the water temperature in his house. Claimant researched the customer's complaints using books about applicable building codes and tried to explain to the field specialist what she had learned and what she thought was an appropriate response to the customer's complaint. Claimant perceived that the field specialist was not listening to what she was saying and that he thought that she was not qualified to express an opinion on the customer's complaint. Later, when claimant was speaking with a vendor about the complaint, the vendor told claimant that the field specialist had already taken care of the complaint. Claimant perceived that the vendor thought that she did not know her job and thought that the field specialist had given the vendor the impression that claimant was not qualified. When claimant asked the field specialist what he might have said to the vendor, the field specialist told claimant "that I'm going to be perceived as a woman in the construction industry" and that "I am a girl and I should expect that treatment from vendors because they are very men and very experienced [in the construction industry]." Transcript at 46. Claimant perceived the field specialist's comment as "very degrading" to her and an example of his gender bias. Transcript at 46.

(6) By approximately the end of November 2013, claimant had received several complaints from customers about the field specialist's approach and the customers' inability to reach the field specialist. Claimant forwarded some of these complaints to the employer's director of administration. Although the director called claimant about the complaints and claimant told the director about her own and the customers' problems in reaching the field specialist, the director did not take actions to require the field specialist to be more responsive. Claimant continued to complain to her supervisor that she was not able to reach the field specialist to effectively convey information to him. Claimant also complained to her supervisor that the field specialist excluded claimant from conversations that she thought that she needed to participate in order to perform her job. At around this time, claimant began to stay at her desk during her lunch hour to enable her to speak with the field specialist if he came to the office during her meal break. When the director of administration became aware that claimant was staying in during her lunch, the director told claimant that she would prefer claimant to take her lunch away from her desk.

(7) Also by the end of November 2013, claimant had concluded that lack of communication from the field specialist made it impossible to perform her job well. Claimant began to think about her work when she was at home at night. Claimant began to question her job skills.

(8) On December 11, 2013, claimant noticed that her supervisor did not greet her when he arrived at work that day. Claimant went to the director of administration's office and asked if there was some problem. The director asked claimant's supervisor to join her and claimant. Claimant told them that she

was unhappy working with the field specialist, that he treated her with disrespect and that she was not able to reach him by phone, email or in person to communicate with him. Claimant told them she thought she would like to leave work. The director and the manager told claimant that they wanted her to stay and that they would talk to the field specialist about his behavior and would "implement something" to enhance the field specialist's communications to claimant. Transcript at 56; *see also* Transcript at 6, 30, 66. The director of administration acknowledged to claimant that the field specialist could be a "difficult person" to work with. Transcript at 30. Claimant's supervisor commented that, regardless of the field specialist's habits, the employer considered him "indispensable" and "irreplaceable" and that claimant needed to "better manage [her] demands" on the field specialist's time. Transcript at 61. The meeting concluded with claimant not having made a decision about what she intended to do.

(9) On December 11, 2013, during her lunch break, claimant decided to leave work because she was upset about her supervisor's comment that, in addition to the field specialist needing to improve his responsiveness, claimant needed to adjust the demands she made on the field specialist. Claimant construed this comment to mean that the employer did not intend to take steps to improve the manner in which the field specialist communicated with her. After her lunch break, claimant gave a resignation letter to her supervisor. The letter stated that claimant "suggest[ed] an effective date of December 27th" for her last day of work. Transcript at 13. The letter stated, however, that claimant was "willing to extend" that proposed quit date or "if you feel an earlier departure would be more convenient to you, I will understand." Transcript at 13. Later in the day, the director of administration told claimant that "today would be [her] last day" and presented a separation agreement to claimant to sign. Transcript at 63. The director told claimant that she would be paid through December 13, 2013 and she would receive an additional \$1,000 in severance pay if she signed the separation agreement and returned to it to the employer. Claimant left the workplace on December 11, 2013 and did not return. Claimant never signed the separation agreement because she objected to its confidentiality provisions and never received the \$1,000 in severance pay.

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

The first issue this case presents is whether the employer discharged claimant on December 11, 2013 or whether claimant voluntarily left work on that date. *J.R. Simplot v. Employment Division*, 102 Or App 523, 528, 795 P2d 579 (1990) states that when a claimant has notified an employer that she intends to quit on a particular date, and then agrees with the employer to an earlier separation date, the work separation is still treated as a voluntary leaving and not a discharge. In this case, although claimant suggested December 27, 2013 as her last day in her resignation letter, she also agreed in that letter to any date that suited the employer's convenience. Transcript at 13. Because claimant and the employer mutually agreed to accelerate the date of her voluntary leaving, there was no discharge. Claimant's work separation was a voluntary leaving on December 11, 2013.

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.

None of claimant's complaints about the behavior of the field specialist, when claimant supplied the actual facts underlying them, appear to have created reasonably grave circumstances within the meaning of OAR 471-030-0038(4). In addition, it appears that claimant quit work not because of any behavior by the field specialist, but because her supervisor had expressed to her that, although he and the director of administration would talk to the field specialist and try to implement some ways to improve his behaviors and communications, claimant would also need to take some steps of her own in adjusting to the work style of the field specialist. Transcript at 61, 62. It appears from the record that the response of these members of management to claimant's complaints was a sincere effort to retain claimant as an employee and to address claimant's concerns. Since the meeting on December 11, 2013 was the first time claimant had expressed that she thought the problems were so serious that she needed to leave work, claimant did not have an objective basis to conclude that the director and her supervisor did not intend to take the steps that they had promised to try rectify the situation. That claimant's supervisor noted that claimant might have some responsibility for the difficulties in her working relationship with the field specialist and might need to adjust her approach to the field specialist was not an unreasonable statement to make or an unreasonable perspective on the problems underlying the working relationship of claimant and the field specialist. It is not unknown for employees to need to adapt their professional styles to the personalities and habits of the employees with whom they most closely work. Most employees do not consider such adaptations, in and of themselves, to be grounds to quit. A reasonable and prudent administrative coordinator, exercising ordinary common sense, would not have concluded that she needed to quit work because her supervisor told her that she might need to reduce some of her demands on the field specialist's time or take other steps to improve her working relationship with the field specialist along with the field specialist needing to also take some steps of his own. On the facts in the record, claimant did not show, more likely than not, that she had grave reasons to leave work.

Claimant did not demonstrate she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-13130 is affirmed.

Tony Corcoran and J.S. Cromwell, pro tempore;
Susan Rossiter and D.E. Larson, not participating.

DATE of Service: May 14, 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.