

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0731

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On January 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #12298). Claimant filed a timely request for hearing. On April 9, 2014, ALJ Wiperman conducted a hearing, and on April 11, 2014 issued Hearing Decision 14-UI-15309, affirming the Department's decision. On May 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Freres Lumber Co. Inc. employed claimant from July 1, 2013 to January 9, 2014 as a payroll specialist.

(2) The employer had a non-industry standard payroll system. The employee who previously worked as the employer's payroll specialist trained claimant during claimant's first month of employment, but had limited availability due to the demands of her own position. At the end of claimant's first month, her supervisor prohibited her from asking anyone other than him questions about performing her duties.

(3) Claimant continued to have questions about the employer's payroll procedures after her initial training period. Claimant asked her supervisor questions, but he often did not know the answers to her questions. Claimant was also dissatisfied with the manner and tone in which the supervisor responded when claimant asked questions about payroll procedures. When claimant asked her supervisor questions, he usually refused to explain the procedures and responded, "Figure it out." The supervisor would speak in a loud voice, and his face would become red when he addressed claimant.

(4) In October 2013, claimant met with the employer's human resources manager and complained about how her supervisor spoke to her and refused to answer her questions. The human resources representative told her to speak with an owner.

(5) The same day, claimant met with one of the employer's owners and told him her concerns about how the supervisor treated her. The owner told claimant he would address claimant's complaints with the

supervisor, and that he hoped the supervisor's treatment of her would improve. He asked claimant to return to speak with him again if the supervisor's behavior did not improve. The owner met with the supervisor that day. Initially, claimant noticed some improvement in how the supervisor treated her. After approximately one week, claimant again became dissatisfied with how the supervisor treated her. Claimant did not return to the owner to complain again about the supervisor's behavior.

(6) As a result of the stress claimant felt from work, claimant experienced nausea, loss of appetite, a depressed mood, and episodes of crying. During her last two weeks of work, claimant began to experience sharp chest pains and increasingly frequent migraines. Claimant did not seek medical attention for her symptoms.

(7) On January 9, 2014, claimant was attempting to correct an employee's overtime pay. She asked her supervisor for assistance because she was unsure how to correct the employee's check. The supervisor later gave her corrections for the employee's check, and told her to follow his example for another employee with the same payroll issue. Claimant asked the supervisor to explain how he made the changes, but he refused and told her to follow the example he gave her. Claimant followed the supervisor's changes to correct the other employee's pay, and sent the final payroll and checks to the chief financial officer for approval. He returned the two revised employee checks to claimant and said they were processed incorrectly. Claimant asked her supervisor again how to correct the checks. He made an adjustment, but again did not explain how he made the corrections, and told claimant to "figure it out" on her own. Exhibit 1.

(8) Claimant did not receive any written reprimands for her performance. Claimant completed a 90-day probationary period at the end of September 2014, and was made a full-time, permanent employee at that time.

(9) On January 9, 2014, claimant quit work because she was dissatisfied with how her supervisor treated her and because the stress from work negatively affected her health.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude 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 P2d 722 (2010). Claimant referred to her health and identified symptoms, but did not assert or show she had a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). Thus, we do not apply a modified standard to this case as we would for a person with a permanent or long-term physical or mental impairment.

Claimant quit work on January 9, 2014 because of the allegedly hostile work environment created by her supervisor and the impact it had on her health. Audio Record ~ 6:46 to 7:49. Claimant testified that her supervisor treated her in a demeaning manner, acted angry when she asked for assistance, and usually

would tell her to “figure it out” without providing an explanation. Exhibit 1; Audio Record ~ 15:24 to 15:45. Claimant testified that she was dissatisfied with that response because she did not know what to do to “figure it out,” and the supervisor did not answer her questions or permit her to seek assistance from other resources at work. Audio Record ~ 15:38 to 16:07. Claimant testified that she felt frustrated when the supervisor prohibited her from asking the previous payroll specialist questions, especially because other employees were permitted to ask coworkers for assistance, and the employer had an unusual payroll system. Audio Record ~ 17:54 to 19:19. Although claimant established that her supervisor made it difficult for her to succeed in performing her job duties and was rude to her, she did not allege that he yelled at her, used foul language toward her, called her names, or threatened her with personal harm. Nor did claimant establish that the supervisor’s conduct prevented her from meeting the employer’s expectations about her work performance, or that she faced the possibility of discharge due to her work performance. Claimant successfully completed the 90-day probation period, and did not receive any written reprimands regarding her work performance. Claimant failed to establish that the supervisor’s behavior was such that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

The record shows claimant tried unsuccessfully to improve her working relationship with her supervisor by complaining to the supervisor, to human resources, and to one of the owners. However, claimant knew she could return to the owner to further discuss the supervisor’s behavior. Claimant had spoken to an owner about the supervisor before, and he immediately attempted to remedy her concerns by discussing her complaints with the supervisor. The owner asked claimant to return to speak with him again if she was not satisfied with the outcome of the owner’s efforts. Given the owner’s response to claimant’s first meeting with him about the supervisor, and the owner’s express request that claimant return to speak with him if she experienced problems with the supervisor, claimant has not shown it would have been futile for claimant to return to the owner to ask for additional assistance, rather than to resign. Moreover, although claimant experienced health symptoms due to work stress, the record does not show that her work environment or her symptoms were so severe as to prevent her from continuing to work for an additional period of time while seeking further assistance from the owner.

We conclude that claimant did not have good cause to voluntarily leave work. Claimant is not eligible for the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-15309 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: June 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.