

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0756

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On March 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75400). Claimant filed a timely request for hearing. On April 7, 2014, ALJ Murdock conducted a hearing, and on April 15, 2014 issued Hearing Decision 14-UI-15221, affirming the Department's decision. On May 5, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bateman Newport, LLC employed claimant as a funeral director and embalmer from November 11, 2013 through February 21, 2014.

(2) Claimant's coworker, Darla, did not treat claimant with professionalism or respect. Darla rolled her eyes when claimant spoke with her, complained that claimant rudely demanded she do tasks she had volunteered to complete, and used vulgar language. Claimant had difficulty performing some of her duties because Darla withheld information from her or failed to notify claimant of phone messages from clients. Darla did not single claimant out for unprofessional treatment, she also yelled at the general manager and used foul language toward him, and behaved similarly with other employees.

(3) Some coworkers treated claimant kindly when Darla was not around, but did not acknowledge claimant if Darla was in the room. Claimant believed that Darla "made a hostile environment for me and anyone else in the workplace," and observed that "[m]ost everyone at the facilities just tries to go along with her, or she controls enough of the office that she makes your life extremely miserable. Either you get along and go with what she says or does, including treating other hostilely, or your day or week will be absolutely miserable until you get on her good grace again." Exhibit 1.

(4) On a number of occasions during her employment, claimant complained to Jason, the general manager, about Darla's behavior. Jason typically told claimant she should try to avoid Darla. Although claimant and Darla usually worked in different facilities, claimant and Darla had to interact with each other on a daily basis because their respective job duties required they do so. Jason's advice to claimant did not resolve the problem with Darla, and Jason did not otherwise meaningfully intervene to improve claimant's work environment.

(5) Claimant made vague allusions to the owner that she did not like the atmosphere in the Newport facility in which Darla worked, but did not make any specific complaints to the owner about Darla's behavior. Nor did she complain to the owner that Jason had failed to address her complaints about Darla.

(6) Jason was Darla's ex-husband. In late January 2014, claimant and Jason began to date each other. Around that time, Jason found a new job in Montana and notified the employer's owner of his own plan to resign. The owner asked claimant to take over as general manager on a permanent basis, but claimant refused and offered to work as interim general manager until the owner hired a new general manager. The owner did not want claimant to leave her employment, and agreed.

(7) On February 10, 2014, claimant answered a call Darla had transferred to her without acknowledging Darla. Darla became upset, complained to Jason, and when Jason told her to discuss the matter with claimant, Darla came "marching out" to claimant's desk, began to yell at claimant, and pointed her finger in claimant's face. Transcript at 14.

(8) An argument between Jason, Darla and claimant ensued, during which claimant left to call the owner. The owner "calmed me down and reassured me that everything was going to be fine. And that he did not want me to leave. And he was going to have Jason dismiss Darla at 4:30 this afternoon. And it should have been done a long time ago." Transcript at 25.

(9) After having been reassured that the owner was firing Darla and wanted claimant to continue working, claimant prepared an email addressed to the owner announcing her resignation, effective February 24, 2014. Claimant wrote, among other things, "I feel badly that if I stay Darla would probably be let go and I understand it's not on my shoulder and that it is well over due but in turn I have only been here for 90 days and feel terrible and I am sure if I were to stay I would be looked upon as the whistle blower and I do not want that stress or this hostile environment any longer." Exhibit 2.

(10) Claimant subsequently agreed to accelerate the effective date of her leaving to February 21, 2014 to coincide with the employer's pay period ending date.

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 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.

Claimant's primary complaint about her working conditions involved Darla's treatment of her. While Jason did not take adequate steps to address or resolve claimant's concerns, claimant never complained to the owner until the day of the final incident, and, once she did, he responded immediately that he would resolve the situation by dismissing Darla. Despite the owner's assurances, claimant left work.

Claimant argued that she had to leave regardless what the owner did about Darla because her coworkers were Darla's friends and would have treated her poorly. Exhibit 1; Transcript at 26. However, claimant had previously testified that her coworkers merely tolerated Darla's behavior towards themselves and claimant to avoid angering Darla. Claimant did not describe an environment in which coworkers would plausibly remain loyal to Darla at claimant's expense after Darla's dismissal, or subject her to mistreatment based on the owner's decision to dismiss Darla. Moreover, given the employer's immediate response to claimant's complaint, the record fails to show that the owner would not have promptly dealt with any further complaints had coworkers attempted to mistreat her.

To prove she quit work with good cause, claimant had to prove by a preponderance of the evidence that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Given the owner's decision to dismiss the person responsible for creating most if not all of claimant's concerns about the workplace, and in the absence of evidence tending to show it was more likely than not that claimant would have been subject to retaliation had she stayed, claimant failed to meet that burden. As such, we conclude that claimant voluntarily left work without good cause. She is disqualified from receiving unemployment insurance benefits because of her work separation until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-15221 is affirmed.

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

DATE of Service: June 11, 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>.

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