

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0793

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 15347). Claimant filed a timely request for hearing. On May 7, 2014, ALJ Kirkwood conducted a hearing, and on May 27, 2014, issued Hearing Decision 14-UI-17034, affirming the administrative decision. On May 8, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Potter-Webster Co. employed claimant from June 28, 1999 to March 31, 2014. Claimant began work for the employer as a foreman; after 9 years, he was promoted to a position as a manager, a position he held until September 26, 2013, when he was demoted to a technician position.

(2) In January 2013, claimant injured his neck. He filed a worker's compensation claim for the injury. For the next several months, claimant took time off because of medical appointments for treatment of his injury. Claimant also missed work because of problems with his car.

(3) On September 26, 2013, the employer's operations manager demoted claimant to a technician position because the operations manager believed that claimant had excessive absences, particularly those caused by his car problems. Claimant's salary did not change as a result of this demotion, however. The employer took away claimant's computer because claimant did not need to use a computer as a technician. After claimant's demotion, employees began taking their breaks in claimant's office. Claimant was upset about the change in his work assignment, the loss of his computer, and the use of his office as a break room.

(4) Sometime in March 2014, the operations manager heard rumors that claimant was planning to leave work. Because the operations manager considered claimant to be a valued employee who was

knowledgeable about the employer's business, she wanted claimant to train his replacement before he quit.

(5) On or about March 18, 2014, the operations manager spoke with claimant about the need to train his replacement. The operations manager was stressed about claimant's possible departure; she spoke loudly and told claimant that we needed "to hurry our asses up and get this done," i.e., complete cross training of claimant's replacement. (Audio of 05/07/14, 12 p.m. hearing at 22:47). Claimant felt that the operations manager belittled him in front of other employees, and his feelings were hurt. One employee overheard the argument between claimant and the operations manager, but paid no attention to it and did not know what the argument was about.¹

(6) Claimant did not return to work for the employer after completing his shift on March 31, 2014 and did not contact the employer to report he would be absent. The employer had continuing work available for claimant.

(7) Claimant left work because he felt the employer created a hostile work environment by pressuring him to cross train his replacement, belittling him in front of other employees, and demoting him to a technician position. Claimant chose to work through March 31, 2014 the fiscal year for the employer's profit sharing plan ended on that date. By working through that date, claimant was entitled to receive a contribution to his profit sharing plan for the previous year.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2); *Young v. Employment Department*, 170 Or App 752, 12 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).²

Claimant left work because he believed the employer created a hostile work environment. The only evidence of this hostile work environment claimant cited was his September 26, 2013 demotion and the March 18, 2014 discussion with the operations manager. Claimant's demotion did not create reasonably grave circumstances within the meaning of OAR 471-030-0038(4). As a result of the demotion, claimant continued to receive the same salary he had been receiving for performing a job with less responsibility. The demotion and the changes that resulted from it – loss of a computer and use of claimant's office as a break room -- occurred several months before claimant left his job on March 31,

¹ The employee who overheard the argument has limited English proficiency and testified through an interpreter at the hearing.

² If a claimant has a long term "physical or mental impairment" as defined at 29 CFR §163.2(h), the record must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for his employer for an additional period of time. There is no evidence in the record that claimant's neck injury constituted a long term physical impairment. Thus, we do not apply a modified standard to this case as we would for a person with a long term physical or mental impairment.

2014. Claimant provided no evidence that his situation worsened between the date of his demotion and the date he left work. Claimant chose to leave his job on March 31, 2014 because he was eligible to receive an annual contribution from the employer's profit sharing plan. Thus, even assuming that claimant's demotion constituted good cause for leaving work, claimant failed to show that it constituted good cause for leaving work on the date he did --- six months after he was demoted, when he was entitled to receive the maximum contribution from the employer's profit sharing plan.

Based on testimony concerning claimant's March 18 discussion with the operations manager, we conclude that the operations manager did not treat claimant in a manner that would hurt the feelings of a reasonable and prudent person of normal sensitivity. Although the operations manager used the work "asses" in urging claimant to train his replacement, that word is part of a common vernacular and is not, by itself, offensive. In regard to claimant's assertion that the operations manager belittled him in front of other employees, we note that the only employee who overheard the argument has limited English proficiency. This employee paid no attention to the argument and did not know what it was about.

Claimant contends that the employer retaliated against him because of the worker's compensation claim he filed and the time off he took for treatment of his injury. We find this argument unpersuasive. There is no evidence that the employer denied claimant time off for needed medical appointments. The employer had legitimate reasons, unrelated to claimant's worker's compensation claim, for taking the actions to which claimant objected -- demoting claimant and requiring that he train his replacement. The employer could reasonably expect that claimant would maintain good attendance when he worked as a manager, and did not act unreasonably in demoting claimant to a less responsible position when he was unable to meet this expectation. It was also reasonable for the employer to ask claimant, a knowledgeable employee who had worked for the employer for 15 years, to train his replacement.

In sum, the claimant failed to prove that the September 26, 2013 demotion and the March 18, 2014 argument constituted reasons of such gravity that a reasonable and prudent person of normal sensitivity would have no alternative but to quit work on March 31, 2014. We conclude that claimant did not have good cause to leave work and is not eligible for unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-17034 is affirmed.

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

DATE of Service: June 19, 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 court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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