

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0869

*Reversed
Disqualification*

PROCEDURAL HISTORY: On December 16, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 114345). Claimant filed a timely request for hearing. On February 11, 2014, the Office of Administrative Hearings (OAH) scheduled a hearing for February 24, 2014. On February 25, 2014, ALJ R. Frank issued Hearing Decision 14-UI-11061, dismissing claimant's request for hearing for failure to appear. Claimant filed a timely request to reopen the hearing. On April 29, 2014, ALJ Wyatt conducted a hearing, and on May 1, 2014 issued Hearing Decision 14-UI-16567, allowing claimant's request to reopen the hearing, and concluding that claimant quit work with good cause. On May 19, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument.

FINDINGS OF FACT: (1) Northwest Pathology Services LLC employed claimant from October 25, 2004 to November 19, 2013.

(2) Claimant worked for the employer as an administrative assistant, performing a variety of tasks. On Wednesdays, she also covered for the employer's courier, who did not work on Wednesdays.

(3) On September 25, 2013, claimant notified the employer that she would be quitting work to attend a University of Oregon study abroad program in Seville, Spain during the spring semester of 2014. Claimant stated that she would continue to work until her departure. On October 30, 2013, claimant notified the employer that her last day of work would be December 18, 2013.

(4) On or about November 11, 2013, the employer's general manager sent claimant an email with a list of questions regarding the transition during claimant's last month of work. The general manager asked claimant to respond to the email by November 12. Claimant did not respond the email before leaving work on November 12. As she was leaving, the general manager confronted her in front of other employees and loudly expressed frustration with claimant's failure to respond to her email, and claimant's excuse that she was not reminded to respond to the email.

(5) Claimant typically worked for the employer between 7:00 a.m. to 3:30 p.m. on weekdays. Claimant asked her supervisor if she could work on Saturday, November 16, 2014. Claimant's supervisor did not have the authority to grant claimant's request, and forwarded it to the general manager. The general manager denied the request.

(6) The employer typically allowed claimant a 30 minute lunch break. After business hours on November 18, 2013, claimant sent her supervisor an email requesting a three hour lunch break on Wednesday, November 20, and stating that the employer would need to arrange for courier coverage during that time. After reporting for work on November 19, claimant explained to her supervisor that she was requesting the time off to attend a meeting for her study abroad program.

(7) Claimant's supervisor did not have the authority to grant claimant's request, and discussed it with the general manager. The general manager was reluctant to grant claimant's request without more information given the difficulty of arranging for courier coverage on such short notice. Claimant's supervisor sent claimant an email asking if the meeting could be rescheduled to a different day, or later in the day. Claimant replied with an email stating that she could not reschedule the meeting. Claimant's supervisor replied with an email asking claimant what the consequence would be if claimant missed the meeting. Claimant replied with an email stating that she would not tolerate the general manager's continued harassment, and that she was quitting work, effective immediately.

(8) When filing her claim for benefits, claimant asserted to the Department that she quit work because of the general manager's ongoing harassment.

(9) Claimant's adult daughter suffered from Down syndrome. During the course of claimant's employment the employer allowed her intermittent leave under the Family Medical Leave Act (FMLA) to care for her daughter. On December 5, 2013, claimant told a Department representative that she quit work because the general manager denied her request for time off to attend a meeting with her daughter's employer. Claimant told the Department representative that she did not quit work because of the study abroad program, and that she was not attending the program. Claimant also asserted that the general manager had yelled and screamed at her for failing to respond to an email.

(10) On December 10, 2013, the general manager told the Department representative that claimant requested the time off to attend a school function for her study abroad program, and quit work because the employer did not immediately grant her request. The general manager admitted raising her voice in frustration with claimant's failure to respond to her email, and claimant's excuse that she was not reminded to respond to the email, but denied threatening or yelling at claimant.

(11) Claimant attended the University of Oregon study abroad program in Seville, Spain.

CONCLUSIONS AND REASONS: We agree with the Department, and not the ALJ, that claimant quit 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. Leaving work without good cause includes leaving work to attend school, unless required by law. OAR 471-030-0038(5)(b)(D).

In Hearing Decision 14-UI-16567, the ALJ found in accordance with claimant’s testimony that on November 19, 2013, claimant’s supervisor informed her that the employer’s general manager had denied her request for an extended lunch break on November 20.¹ In support of that finding, the ALJ noted that although the general manager testified that she had not decided whether to deny claimant’s request, claimant provided the only firsthand testimony about her conversation with her supervisor.² Based on that finding, the ALJ concluded that claimant had no reasonable alternative but to attend meetings for her study abroad program and with her daughter’s employer, and therefore quit work with good cause.

However, the general manager’s testimony that she did not instruct claimant’s supervisor to deny claimant’s request for an extended lunch break also was “firsthand,” consistent with the general manager’s statements to the Department on December 10, 2013, and the November 19 emails between claimant and her supervisor. *See* Transcript at 43-44; Exhibit 2 at 5, 8-9. We find no basis for concluding that claimant was a more credible witness than the general manager, especially given claimant’s inconsistent statements regarding what meetings she wanted to attend on November 20, and whether she was going to attend the study abroad program. *See* Transcript at 30-32; Exhibit 2 at 4, 8-9. Nor do we find it likely that claimant’s supervisor, whom claimant repeatedly described as sympathetic and apologetic,³ exceeded her authority and denied claimant’s request for an extended lunch break without the general manager’s knowledge. We find it more likely that claimant quit work because the general manager was reluctant to grant her request for an extended lunch break to attend a study abroad program meeting, which, as claimant asserted in her resignation letter, she considered part of the general manager’s “continued harassment.” Exhibit 2 at 9.

At hearing, claimant asserted that the general manager harassed her over a period of two years. Transcript at 27. As of October 30, 2013, however, claimant was willing to continue working for the employer until December 18, 2013, at which time she intended to quit work to attend the study abroad program. We therefore focus on the general manager’s behavior toward claimant after October 30 in

¹ Hearing Decision 14-UI-16567 at 2.

² *Id.* at 5.

³ Transcript at 33, 37, 47

determining whether claimant had good cause to quit on November 19, 2013. At hearing, claimant testified that on November 12, 2013, the general manager “yelled” and “screamed” at her for failing to respond to the general manager’s November 11 email. Transcript at 26, 29. The general manager admitted confronting claimant in front of other employees and raising her voice when expressing frustration with claimant’s failure to respond to her email, but denied threatening, yelling or screaming at claimant. Transcript at 46; Exhibit 2 at 5. It was not unreasonable for the general manager to deny claimant’s request to work outside her normal work hours on Saturday, November 16, 2013. The record fails to show claimant explained to her supervisor or the general manager that she wanted to take an extended lunch break on November 20, 2013, in part, to meet with her daughter’s employer, or that claimant was entitled to time off for that reason under FMLA. It was not unreasonable for the general manager to request more information from claimant before deciding whether to grant her request for time off to attend the study abroad program meeting. Thus, to the extent claimant quit work due to the general manager’s behavior, she failed to establish that that behavior was so egregious that no reasonable and prudent person would have continued to work for her employer for an additional period of time, at least until claimant quit work on December 18, 2013 to attend the study abroad program. And to the extent claimant quit work to attend the study abroad program meeting, she quit work to attend school not required by law, and therefore quit work without good cause under OAR 471-030-0038(5)(b)(D).

Claimant quit work without good cause and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-16567 is set aside, as outlined above.

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

DATE of Service: June 30, 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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