

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0954

*Reversed
Disqualification*

PROCEDURAL HISTORY: On April 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83651). Claimant filed a timely request for hearing. On May 15, 2014, ALJ Kirkwood conducted a hearing, and on May 16, 2014 issued Hearing Decision 14-UI-17855, concluding there was no work separation. On June 3, 2014, the Department filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Q Tax & Bookkeeping Service, LLC employed claimant from February 3, 2014 to March 12, 2014.

(2) Prior to March 12, 2014, claimant was the victim of domestic violence and her husband was incarcerated. Claimant had felt "scatter-brained" at work and needed some time off, and the employer's owner agreed she could take time off work.

(3) On March 12, 2014, claimant returned to work. The secretary told claimant to speak with the owner before she went to her desk. Claimant spoke with the owner on the phone, who also told claimant he wanted to talk to her in person before she did any work. The secretary suggested claimant go get some coffee while she waited for the owner to arrive. Claimant asked the secretary if she was going to be fired, and the secretary told her she would have to wait and speak with the owner.

(4) Claimant concluded that the owner was going to discharge her, and to shame and humiliate her in front of her coworkers. She left work, went to her car, and cried. Rather than asking the owner if they could meet away from the office, to avoid the shame and humiliation, or asking whether her belief that the owner was about to fire her was true, she sent a text message to the owner that stated,

Quentin, in the last three weeks I've lived in a state of fear I'd wish upon nobody. The only thing good I had going for me in my life is my children and you my job. After I got off the phone with you and just how Judy was behaving and talking, I started having a panic attack. I had to leave. I'm trying to learn about faith, trust, forgiveness and how to let god's will cradle my life but I just couldn't sit there knowing I was about to be humiliated and shamed by being fired. I think you're a wonderful man and I'm truly sorry for the way my life disrupted that office. Thank you for the opportunity, and if you would like to still speak with me you can just call me. I'm just so upset because I loved working for you.

Audio recording at ~19:35. The owner had no intention of discharging claimant. The owner did not receive claimant's text message for approximately an hour. He attempted to call claimant but did not receive an answer, and was unable to leave a voicemail. Once he received claimant's text, while upset that claimant was not in the office, the owner quickly skimmed claimant's text message, understood that claimant had left work, and replied,

I'm sorry this didn't work out for you. You do know QuickBooks. Thank you. You just need to be honest and trusting with people. I do need the key to the office and the phone please. I will put your check in the mail today. You can drop the keys and phone at Newport office today . . . Just walk in and hand it to Kenny. Tell him this is for Quentin. Nothing else embarrassing. God bless and good luck.

Audio recording at ~20:45. Claimant construed the owner's reply as confirmation that he had intended to discharge her during the meeting she refused to attend. She did not answer his subsequent calls or text messages, and never returned to work.

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

The ALJ concluded that there was no disqualifying work separation between claimant and the employer, reasoning that although "the employer misinterpreted claimant's text message" and claimant reasonably believed she had been discharged, because "[c]laimant was willing to continue to work for the employer and the employer was willing to allow claimant to continue to work," there was no separation. Hearing Decision 14-UI-17855 at 2. We disagree.

"Work" is defined as the "continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (August 3, 2011). A work separation occurs if, at any time while that continuing relationship is ongoing, the employee could have continued to work for the same employer for an additional period of time and did not, or the employee was willing to continue working for an additional period of time but was not allowed to do so. OAR 471-030-0038(2).

On March 12, 2014, there was a continuing employment relationship between claimant and the employer at the time claimant stopped working for the employer. She was scheduled to work, reported to work, and, despite having been told to talk to the owner before going to her desk and never having been told that she was fired or that continuing work was not available to her, claimant incorrectly, and unreasonably, concluded that the employer planned to discharge her and left work on that basis. Because she did so at a time when continuing work was available to her, the work separation was a voluntary leaving.

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). 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.

Claimant concluded on the basis of the owner's desire to speak with her before she began work after returning from authorized leave that she was going to be discharged, and left work rather than "be humiliated and shamed by being fired." However, the employer did not have any plans to discharge claimant, nor does the record show that he had any intent of humiliating or shaming her in the process, nor did claimant do anything to verify whether her assumption about the owner's intentions were correct before leaving work. Claimant testified that she "did enjoy working for [the owner] a lot," and described him as "very sweet" and "very kind," "one of the best bosses I ever had," and "a wonderful man to work for." Audio recording at ~ 11:35, ~ 12:00, ~ 14:10. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, who had a good relationship with her boss, would not assume on the basis of his request to meet with her before she began work after returning from a period of leave, that she was going to be "humiliated," "shamed" and fired, and would not leave work based on that assumption without, at a minimum, engaging in discussion with him as he requested, or asking him whether he was going to discharge her.

Claimant voluntarily left work without good cause. She is, therefore, 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-17855 is set aside, as outlined above.

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

DATE of Service: July 10, 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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