

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1118

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 80938). Claimant filed a timely request for hearing. On June 16, 2014, ALJ Triana conducted a hearing, and on June 19, 2014 issued Hearing Decision 14-UI-20010, affirming the Department's decision. On June 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB therefore considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) United Advantage NW federal credit union employed claimant as a member service representative at its North Portland, Oregon branch from December 7, 2012 to May 4, 2014. Claimant worked for the employer on weekdays.

(2) In December 2013 or January 2014, one of the employers' members used its computer for personal reasons. Claimant informed the member that he was not allowed to do so.

(3) In mid-February 2014, the member was asked by another member if he was waiting in line. The member responded by yelling at the other member that he was in line, and did not care if he "went to jail for you." Transcript at 7. The employer's operations and human resources manager asked the member to quiet down, and he did so. Claimant was told that the member stated he yelled at the other member because claimant gave him a "dirty look."

(4) The operations and human resources manager later told the member that any similar behavior in the future would result in him being asked to leave the employer's offices and not return. The operations and human resources manager also told employees to call the police if such a "situation escalate[d] to an injury or resistance to leave" when the operations and human resources manager was absent. Exhibit 1.

(5) On April 15, 2014, the member stepped in front of another member at claimant's teller window, took one of claimant's business cards, and loudly asked claimant if he needed to speak to management about her. Claimant told the member to do so if he felt it was necessary.

(6) The member told another member service representative that he did not appreciate claimant's demeanor. The member then telephoned the CEO and left a voice message that the employer was "running things unfairly." Exhibit 1. The member then accused the member service representative of stealing from him, told her that he was "about to get a metal mallet and hit the first two people he sees," and that he did not care if he went to "jail over it." Exhibit 1. The member service representative ignored the member's comments and "sent him on his way." Exhibit 1.

(7) The employer reported the member's behavior to the Portland police department and banned him from its offices, but did not prohibit him from using its drive-thru window. Claimant asked to work at a teller window farther away from the entrance to the employers' offices, and the employer allowed her to do so.

(8) On May 1, 2014, the member used the drive-thru window to process a transaction. Another member service representative assisted the member with the transaction, and claimant did not have to interact with the member. On Friday, May 2, 2014, the member again used the drive-thru window to process a transaction. Claimant was the only customer service representative available, and asked the operations and human resources manager to assist the member. The operations and human resources manager did so. Claimant processed the transaction, but did not have to interact with the member.

(9) On May 2, 2014, the operations and human resources manager decided to transfer claimant to its Tualatin, Oregon branch to ensure she had no further contact with the member, who never banked at the Tualatin branch. Claimant agreed that transferring to the Tualatin branch was a "good idea," and the operations and human resources manager scheduled claimant to start work at the Tualatin branch on Monday, May 5, 2014. Transcript at 28.

(10) On May 4, 2014, claimant changed her mind about transferring to the Tualatin branch, and quit work to avoid further contact with the member.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

A claimant who leaves work voluntarily typically 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. However, ORS 657.176(12) provides, in pertinent part, that an individual may not be disqualified from receiving benefits under ORS 657.176(2)(c) if she believes she could become the victim of stalking and leaves work in order to protect herself from stalking that she reasonably believes will occur as a result of her continued employment. As used in ORS 657.176(2)(c), “stalking” means that the person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person thereby alarming or coercing the other person, that it is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact, and that the repeated and unwanted contact causes the individual or a member of the individual's immediate family reasonable apprehension regarding the personal safety of the individual or the family member. OAR 471-030-0150(3) (November 1, 2009).

Claimant quit work to avoid further contact with one of the employer's members. However, the record fails to show that the member ever entered the branch where claimant worked unless he had business to conduct. During the incident in mid-February 2014, the member yelled at another member, and not claimant, and merely asserted that claimant gave him a “dirty look.” On April 15, 2014, the member threatened to complain to management about claimant, and told another employee that he did not appreciate claimant's demeanor. Although the member also stated that “about to get a metal mallet and hit the first two people he sees,” and that he did not care if he went to “jail over it,” he made the statement to another employee whom he accused of stealing from him, and not claimant. The employer responded by reporting the member's behavior to the police, banning him from its offices, and transferring claimant to a branch at which the member did not bank. Claimant failed to show that the member ever attempted to contact her outside work, entered the employer's offices after April 15, or attempted to contact claimant when banking at the employer's drive-thru window. Absent such showings, claimant failed to establish that no reasonable and prudent person would have accepted the transfer to the other branch and continued to work for the employer for an additional period of time. Likewise, to the extent claimant quit work to protect herself from “stalking,” as defined under OAR 471-030-0150(3), that she believed would occur as a result of her continued employment, she failed to establish that that belief was reasonable, as required under ORS 657.176(12).

We therefore conclude that claimant quit work without good cause, and that she is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-20010 is affirmed.

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

DATE of Service: July 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.