

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1173

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On May 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 161830). The employer filed a timely request for hearing. On June 12, 2014, ALJ Frank conducted a hearing, and on June 20, 2014 issued Hearing Decision 14-UI-20126, concluding claimant voluntarily left work without good cause. On July 8, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Chuck E Cheeses employed claimant from January 7, 2014 to April 12, 2014 as an assistant manager.

(2) On April 10, 2014, claimant asked her general manager if he could cover her shift that day because her children were sick. The general manager told claimant she could not miss work, but could bring her children to work with her. Claimant brought her children to work.

(3) On Friday, April 11, 2014, claimant heard information that caused her to believe the general manager refused to work for her on April 10, 2014 because he was consuming alcohol with other employees outside of work. Claimant called her district manager and told him she was not willing to work with her general manager, and was dissatisfied with the general manager's response to her request for time off to care for her sick child. The district manager persuaded claimant to finish her shift, and told claimant he would discuss claimant's complaints with the general manager over the weekend and would contact her on April 13, 2014. Claimant worked the remainder of the night shift until it ended on April 12, 2014.

(4) The district manager did not speak with the general manager about claimant's complaint, contact claimant on April 13, or tell her she was discharged.

(5) Claimant knew the employer had scheduled her to work on April 14 and 15, 2014, and continuing work was available for claimant on those days. On April 14, 2014, claimant did not report to work or

contact the employer. The district manager tried to call claimant, but her telephone number had been disconnected.

(6) Claimant did not call or report to work on April 15, 2014. The employer considered claimant to have abandoned her job at that time.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without good cause.

The first issue is the nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant knew the employer had scheduled her to work on April 14 and 15, 2014, but did not report to work or contact the employer. Claimant testified that she did not report to work because the general manager told her on April 13 that the employer had replaced her with another employee. Audio Record at ~ 24:38 to 24:48. However, the general manager testified at hearing that he did not speak to claimant on April 13 or tell her she had been replaced. Audio Record at ~ 30:27 to 31:16. The district manager also testified that he did not tell claimant she was discharged. Audio Record ~ at 17:19 to 17:30. Claimant testified that she did not contact the district manager when he failed to contact her on April 13 because she was waiting for him to call her. Audio Record ~ at 25:54 to 26:11. However, claimant's actions showed an unwillingness to continue working for the employer. She told the district manager on April 11 that she was not willing to continue working with the general manager, and did not report to work or contact the district manager after April 11. Because claimant could have continued to work for the employer for an additional period of time, the work separation was a quit.

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.

To the extent claimant voluntarily left work because the district manager did not call her back on April 13, claimant did not show she had good cause for leaving work. The record does not show the district manager told claimant to wait for his telephone call before returning to work. Rather than leaving work, claimant could have contacted the district manager to verify the status of her complaint about the general manager. Claimant did not meet her burden to show she had no reasonable alternative but to leave work.

To the extent claimant voluntarily left work because her general manager did not permit her to miss work due to her child's illness, claimant did not show that the general manager's treatment of her was so egregious that no reasonable person would have continued to work for her employer for an additional period of time to allow management time to address her complaint. Claimant did not show it would have been futile to allow the district manager time to address her complaint before quitting.

In sum, claimant failed to show by a preponderance of the evidence that no reasonable person would have continued to work for her employer for an additional period of time. Claimant therefore failed to establish that she quit work with good cause, and is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-20126 is affirmed.

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

DATE of Service: August 7, 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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