

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1381

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 131449). Claimant filed a timely request for hearing. On July 24, 2014, ALJ Holmes-Swanson conducted a hearing, and on July 31, 2014 issued Hearing Decision 14-UI-22554, affirming the Department's decision. On August 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Strategic Marketing Inc. employed claimant as an administrative assistant from June 29, 2009 until June 3, 2014. The employer's president was claimant's brother, and the office manager was claimant's mother.

(2) In September 2013, the employer instructed claimant to cease contact with a former boyfriend who had obtained unauthorized access to the employer's computer system using claimant's password.

(3) In early June, the office manager learned that claimant had recently resumed direct contact with her former boyfriend. On June 3, 2014, the office manager confronted claimant about the contact. Claimant admitted the contact to the office manager in a highly emotional conversation. The office manager reminded claimant that her contact with the former boyfriend violated a stipulation of her continuing employment. Claimant was very upset and felt the stipulation was an unfair intrusion into her personal life.

(4) At the conclusion of this conversation claimant went to her desk, packed her personal belongings, shut down her computer and continued yelling at the office manager that her discharge was unfair. The manager phoned the employer's president to describe the situation in the office. The president then phoned claimant's desk, the office manager answered and relayed to claimant three times that the employer had not discharged claimant. Claimant heard the office manager tell her three times she had

not been discharged. The president wanted to resolve the situation and asked to speak directly to the claimant. After a heated conversation claimant responded that she was leaving anyway. The president told claimant that if she needed to go, then she should leave.

(5) Claimant hung up on the president and left work. The employer believed she was ending her employment. The office manager requested claimant's keys and credit card. The employer changed claimant's access codes to its computer system.

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

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

In post-employment text messages, and during the hearing, claimant insisted that she had not quit her job, and that the employer discharged her. However, claimant also described the president's phone call to her desk in detail:

... I started hearing his, you know, the conversation he was having with my Mom. You know, because it was up to her - it was up to her ear, and I could kind of hear it. The volume was loud. And she said, you know, you know, because I was saying, you know, this is not fair to be fired. And he was - and then, you know, because I've always been, you know, I've always been loyal.

You know, for five years I've always been loyal to this company. And always, you know, worked my, you know, worked hard for this company. And then, at that point, Jimmy said, you know, tell her she's not being fired. Tell her she's not being fired. So my Mom, you know, relayed got [*sic*] to me. You know, Jimmy said you're not fired. And at that point, you know, I'd, you know, I'd been going through this. You know, there's a lot leading up to this point...she said can you hear him? And I said yes. I can - I can hear what he's saying. So she handed, you know, she handed the phone to me. And I, you know, I said, Jimmy - because he said I couldn't take any personal documents. He told me I could not take any personal documents off . . . He said those are now company property. You cannot take those.

You shouldn't have had them on the computer. And I said, you know, well, you are, you know, I said you're still my brother, Jimmy. You know, you're still my brother, and he said I am not your brother. And at that point, you know, it's - I was already, you know, very emotional. Tearing up. And so I - I hung up the phone on him. And as I, you know, you know, my Mom, of course, is still standing there. She said, you know, what did he say?

I and I started, you know, I started crying. I said, you know, he says that he's not my brother anymore. So at that point she had stood there and, you know, was, you know, was upset as well. And she continued to ask, you know, for my keys, my company credit cards. I was booted off the, you know, I couldn't get back onto the computer. I packed my bag and I left.

Transcript at 9-10.

We agree with the ALJ that although there may have been a misunderstanding between claimant and the office manager when the manager initially reminded claimant of the employer's stipulation against contacting her former boyfriend, the president contemporaneously resolved the misunderstanding by repeatedly telling claimant that she was not being discharged. Even though the employer clearly stated its willingness to continue the employment relationship, claimant hung up on the president and left the office, knowing she had not been discharged by the employer, without attempting to clarify her intention or desire to remain employed. Thus the separation on June 3, 2014 was the result of claimant's unwillingness to continue working for the employer at that time. Claimant voluntarily left work, she was not discharged.

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 bears the burden in a voluntary quit case to show that the situation was so grave she had no reasonable alternative but to leave work. Although claimant engaged in a heated and contentious conversation with her office manager and the employer's president, her mother and her brother, on June 3, 2014, claimant had the reasonable alternative of continuing the discussion with the employer about the ongoing nature of her relationship with her former boyfriend and the threat that he posed to the employer by using claimant's personal information and password for unauthorized access to the employer's computer system. Claimant voluntarily left work without good cause.

DECISION: Hearing Decision 14-UI-22554 is affirmed.

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

DATE of Service: September 4, 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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