

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1685

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On September 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85618). Claimant filed a timely request for hearing. On October 7, 2014, ALJ Murdock conducted a hearing at which the employer did not appear, and on October 9, 2014 issued Hearing Decision 14-UI-26708, affirming the Department's decision. On October 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he disagreed with the ALJ's decision not to admit documents that he offered into evidence as "unduly repetitious of testimony." Claimant's Written Argument at 1; Hearing Decision 14-UI-26708 at 1. Many of the documents, such as claimant's 2012 performance evaluation, a paycheck stub, and two emails from claimant's manager were not relevant to the reasons that claimant left work and the ALJ did not abuse her discretion in excluding them from evidence on that ground. Of the remaining documents that were relevant to this matter, the ALJ allowed claimant to read them verbatim into the record or to testify about their contents. Audio at ~7:08 *et seq.* Because the substance of the relevant documents was entered into the record through claimant's testimony, the ALJ also did not abuse her discretion in excluding the tangible documents from also appearing in the hearing record as exhibits. EAB considered the remainder of claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Kla-Mo-Ya Casino Corporation employed claimant from July 23, 2007 until August 16, 2014. Claimant was last employed as a supervisor in the slot machine area.

(2) Before August 15, 2014, claimant's manager had on a few occasions called the slot department when he was drunk to inquire about various matters, such as the status of particular slot machines or kiosks. These calls were not directed at claimant personally. Audio at ~12:10. The manager also periodically sent "terse" emails to claimant. Audio at ~12:46. Claimant "let it [these behaviors] roll off [his] back for a long time." Audio at 12:46. Claimant's manager issued only one formal warning to claimant during his employment. The warning was not serious.

(3) On August 15, 2014, a pit boss whom claimant supervised asked claimant to "cut off" a particular player at the black jack table from being served any more alcoholic beverages. Claimant explained to the pit boss that she needed to contact security to stop serving alcohol to the customer and did nothing further to assist her.

(4) On August 16, 2014, the next time claimant was at work, claimant received an email from his manager. The manager's email told claimant that he had not properly performed his duties on August 15, 2014 when the pit boss stated that a customer needed to be cut off from alcohol and that his response to her was "not acceptable." Audio at ~9:06. The email stated that claimant's behavior would be addressed next week and that claimant needed to read the employer's alcohol policy and follow it. On that same day, claimant replied to the manager's email. Claimant's email stated that he did not know "what foundation you have for this accusation," that he was aware of the employer's policies for cutting customers off from further alcoholic beverages and recited the relevant passages from the employer's handbook. Audio at ~9:18. Claimant included the employer's general manager and its human resources manager as copied recipients of the email. Later that evening, claimant's manager called claimant. The manager was intoxicated. The manager was upset with claimant and yelled at him. The manager told claimant, among other things, that he was tired of his "fucking b[ull] s[hit]" and asked him if he wanted to keep his "fucking job." Audio at ~10:00. Although claimant tried to speak during the call, he was unable to interrupt the flow of the manager's speech. After claimant hung up the phone, he decided that he needed to quit work because, even if the manager apologized to him, there would be an "issue of mistrust." Audio at ~10:43. Claimant did not inform the employer's general manager, the employer's human resources department or any other representative of the employer's management about the phone call from his manager or his reaction to it.

(5) On August 16, 2014, at the end of his scheduled shift, claimant left a resignation letter on his manager's desk. Claimant's resignation letter stated that he was quitting because of "constant harassment" and "verbal abuse" from his manager. Audio at ~10:55. The letter further stated that "you no longer deserve my dedicated services and exemplary work ethic." Audio at ~11:10. After the end of his shift on August 16, 2014, claimant left the workplace and did not return.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he 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 his employer for an additional period of time.

Although claimant contended that he quit work due to his manager's continuous "verbal abuse" and "harassment," the only incident he specifically described to support this statement was the manager's call to him on August 16, 2014. Audio at ~10:55. As claimant described them, the manager's objectionable

behaviors before August 16, 2014 were some drunken phone calls that were not directed at claimant in particular and some emails to claimant that were "terse" and apparently abrupt. Audio at ~12:04; ~12:46. Claimant did not contend that any of the manager's prior behaviors involved tirades, foul language, threats or subjected anyone to unreasonable domination or personal humiliation. Although claimant understandably disliked such behaviors, the specific details that claimant supplied did not demonstrate, more likely than not, that they rose to the level of ongoing "oppression" or "abuse" required to establish good cause to leave work. *See McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to "sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits); *Beth A. Jackson* (Employment Appeals Board, 13-AB-0502, April 2, 2013) (ongoing unwanted sexual advances and touching despite making complaints); *Brenda A. Kordes* (Employment Appeals Board, 12-AB-3213, January 8, 2013) (ongoing sexual harassment); *Stephen G. Wilkes* (Employment Appeals Board, 12-AB-3173, December 14, 2012) (ongoing verbal abuse despite complaints); *James D. Hayes* (Employment Appeals Board, 11-AB-3647, February 9, 2012) (sexist and ageist remarks); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor's ongoing verbal abuse and fits of temper); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management's ongoing ageist comments and attitudes); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (supervisor's regular fits of temper and verbal abuse).

As claimant described it, he manager's August 16, 2014 interaction with him, and the language the manager used was inappropriate. However, claimant noted that the August 16, 2014 interaction was the first time that he thought "this incident [with the manager] is personal." Audio at ~12:04. Even viewed against the backdrop of the manager's prior behaviors, a reasonable and prudent employee would not have concluded that a single drunken phone call in which his manager used foul language and very vaguely threatened his continued employment, was a grave reason to leave work immediately. Even if claimant thought that his manager's behavior was abusive during the August 16, 2014 telephone call, a reasonable and prudent employee, exercising ordinary common sense and who wanted to remain employed, would not have quit work before informing the employer's human resources department or its upper management of the manager's behavior and determining that they were not going to take steps to correct it. Although claimant testified that he sent copies of his August 16, 2014 reply to the manager's email to the employer's human resources manager and to the general manager, it is not clear why he did so and sending a copy of that email to either one was unlikely and, most probably was not intended to alert them that he was requesting their intervention to control his manager's behavior. On these facts, claimant's reaction to quit work immediately was not that of a reasonable and prudent person, and even if claimant subjectively thought his manager's behavior was excessive, he did not take the steps of a reasonable and prudent person to allow the employer an opportunity to rectify the situation short of his resignation.

Claimant did not show that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-26708 is affirmed.

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

DATE of Service: December 16, 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.