

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1755

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83530). Claimant filed a timely request for hearing. On October 22, 2014, ALJ Dorr conducted a hearing, and on October 23, 2014 issued Hearing Decision 14-UI-27424, affirming the Department's decision. On November 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) UTC Fire & Security employed claimant as an accounts payable lead from March 10, 2008 until August 22, 2014.

(2) Until sometime in approximately mid-2014, claimant's supervisor was the employer's accounts payable manager, Robin Hare (Hare). Claimant and Hare had a poor working relationship. Although claimant worked approximately 8.5 hours per day or approximately 43 hours per week, Hare worked approximately 32 hours per week. Claimant resented the disparity between their work hours. Claimant also thought that Hare was not really working on the days when she telecommuted from her home, and that she intentionally made herself unreachable by the accounts payable staff when she worked from home. In approximately June 2014, Hare was promoted to the position of accounting manager and Seth Humphrey (Humphrey) assumed Hare's former position as accounts payable manager.

(3) After Humphrey became the accounts payable manager, Hare retained supervisory control over the accounts payable department and continued to closely monitor claimant's performance. Claimant's regular shift was 7:00 a.m. until 3:30 p.m., although claimant usually arrived early at 6:00 a.m. or 6:30 a.m. Claimant thought that Hare was often unfairly critical of him if, despite the fact that he had arrived early, he did not work beyond the time his shift was actually scheduled to end, at least until 4:00 to 5:00 p.m. Hare mentioned to claimant that because he was a salaried employee he needed to "work long

enough to get the job done." Transcript at 14. Once, when claimant complained to Hare about the hours he needed to work to complete his duties, Hare told claimant "you need to work smarter, not harder." Transcript at 16. One day in approximately June 2014, claimant worked over 15 hours, from 6:00 a.m. until 9:00 p.m., trying to generate a correct trial balance. During some of this time, claimant was not able to reach Hare to consult with her, and when he finally did so, Hare attributed claimant's problems in generating a correct trial balance to his errors. Claimant thought Hare's criticism was unfair.

(4) During the time that Hare supervised claimant, she sometimes yelled at him. Claimant perceived that Hare behaved this way when trying to avoid answering his questions. Claimant perceived that Hare was, without justification, failing to approve his vacation requests if they were longer than a single day. Hare also did not authorize claimant to use sick days when he was absent from work due to illness, but did approve the use of personal time off.

(5) Beginning in approximately July 2014, the employer was testing a new system for its accounts payable functions. Claimant worked approximately 60 hours per week during the approximately six weeks the system was tested. The new system did not work when it went live in mid-August 2014, and the employer was not able pay its bills using that system. Claimant, Hare and Humphrey were the only employees who had access to the parts of the new system needed to correct the operation of the new accounts payable system and to pay the employer's bills.

(6) Sometime before August 9, 2014, Hare told claimant that he was "clock-watcher" who was "not available in afternoons." Transcript at 9. On August 9, 2014, claimant sent a two page email to Hare's supervisor, the finance leader. In that email, claimant principally complained about Hare's "clock-watching" comment, her work hours and claimant's belief that she did not really work when she telecommuted from her home. Claimant also mentioned that Hare sometimes "screamed and yelled" at him. Exhibit 1 at 3. Claimant did not mention that he was experiencing any health symptoms that he attributed to the work environment or to Hare's behavior. Claimant told the finance leader that he wanted her to keep his email confidential and not to inform Hare of it or its contents. Claimant concluded the email by stating that if Hare's behavior continued "I will contact Human Resources. I will not tolerate her harassing me any longer." Exhibit 1 at 3. Claimant did not subsequently contact the employer's human resources department about Hare's behavior or any other employment-related concerns.

(7) On approximately Friday, August 15, 2014, Hare notified claimant and Humphrey that they needed to work over the weekend of August 16 and 17, 2014 to try to repair the new accounts payable system. Claimant worked 15 hours on the new system on August 15, 2014 and also worked approximately six hours on Saturday, August 16 and Sunday, August 17, 2014. On August 17, 2014, claimant sent an email to Humphrey with the subject line "Todd's Offer." Exhibit 2 at 3. In the email claimant stated that he was going to quit on September 1, 2014 unless he received a "significant increase" in salary, which he defined as at least an increase of twenty percent. *Id.* In the email, claimant expressed dissatisfaction with his current salary because of the lengthy hours he had been working on the employer's new accounts payable system. Claimant also stated in the email that an "ex-girlfriend has terminal cancer [and] I need to spend time with her before she is gone. This is more important to me than this job. If [the employer] wants to talk I am willing to listen." *Id.* In this email, claimant did not mention Hare's treatment of him or any health conditions that he attributed to it or the workplace environment.

(8) On Monday, August 18, 2014 through Friday, August 22, 2014, claimant reported to the employer that he was ill and did not appear for work. During this time, claimant did not contact the human resources department to report any workplace concerns. On August 22, 2014, claimant notified the employer that he was quitting work that day.

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 he 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.

Claimant asserted a varied list of reasons that he quit work when he did, including Hare's behavior and unfair treatment of him, physical symptoms that he attributed to stress in the workplace and overwork. Transcript at 6-8, 9, 11, 12, 13, 14, 19, 20. It is not disputed that claimant did not refer to any of these reasons in his resignation email to Humphreys, which raises questions about the accuracy of them. Claimant admitted that one of the principal reasons he cited in the resignation email, the terminal illness of his ex-girlfriend, was not true. Transcript at 12. This admission, as well, raises doubts as to the credibility of claimant's asserted reasons for quitting.

Assuming that claimant quit, in part, because of the hours he was working, the 43 hours that he generally worked per week was not patently excessive and should not reasonably have constituted a grave reason leave work. Exhibit 1 at 2. The 60 hours per week that claimant was working during the six week transition to and implementation of the employer's new accounts payable system, and the time he worked during the weekend of August 16 and 17, 2014, must be understood in context. From claimant's description, it appears that the correct operation of this new system was imperative to certain of the employer's financial functions and that the new system was a "huge mess." Transcript at 11. Claimant was a supervisory or lead employee and, from his testimony, may have been the only employee who knew the new system well enough to try to repair it. Transcript at 6, 7, 11, 12. While claimant may have disliked working hours in excess of forty per week and on weekends, this is not unheard of among salaried employees, especially when, like claimant, they have particular knowledge that the employer urgently needs in its operations. Moreover, based on the resignation email claimant sent to Humphrey on August 17, 2014, it does not appear that claimant objected to the hours that he needed to work on the new system so much as he thought he was not being adequately compensated for them. Exhibit 2 at 3. As well, claimant did not present any evidence to show that the long hours he spent working during the weekend of August 16 to August 17, 2014 were likely to continue after that weekend. Claimant did not meet his burden to show that the hours he worked during his final six weeks or on his last weekend were a grave reason to quit work.

Assuming that claimant quit, in part, because of Hare's treatment of him, claimant did not present sufficient specific evidence to show that it was good cause to quit work. Although claimant asserted that

Hare "screamed and yelled at him," to the extent that he described specific statement that she made, those statements appeared somewhat innocuous and to have been sporadic expressions of irritation. Exhibit 1 at 3. Significantly, claimant did not contend that Hare issued tirades, engaged in prolonged shouting at him, had temper tantrums, used foul or personally insulting language or threatened him or his job. Although a supervisor's behavior may be good cause to leave work if it creates an "abusive" or "oppressive" work environment, claimant did not establish, more likely than not, that Hare's behavior met that threshold. 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). Even if claimant subjectively thought that Hare's behavior was abusive, claimant was aware of the employer's human resources department since he told the finance leader on August 9, 2014 that he was going to contact that department if Hare's behavior did not stop. Exhibit 1 at 3. A reasonable and prudent person, exercising ordinary common sense and who wanted to remain employed, would not have concluded that he needed to quit work without first determining that the employer's human resources department was not going to correct the problem with Hare's behavior.

Assuming that claimant quit work, in part, due to other aspects of Hare's behavior that he considered unfair, his complaints appeared to center on Hare's unwillingness to work the hours that he did and her unwillingness to take on certain tasks that she assigned to claimant. Transcript at 6, 7, 8, 11. Although claimant might have thought that Hare's work ethic was lacking and that her allocation of work assignments was unfair, these are not, in and of themselves, grave reasons to leave work unless claimant demonstrated that they also caused some serious detriment to him. Claimant did not meet his burden because he did not show that these aspects of Hare's management style objectively caused any significant harm to him.

Claimant also contended that he quit work due to stomach problems, vomiting and diarrhea that he attributed to stress in the workplace. Transcript at 7, 12. Claimant asserted that he had been experiencing these symptoms since sometime in July 2014 and they intensified during the final weekend that he worked. *Id.* However, claimant did not mention these alleged symptoms in his August 9, 2014 email to the finance leader and in his August 17, 2014 resignation email to Humphrey, which significantly undercuts the credibility of this claim. Exhibit 1 at 2-3; Exhibit 2 at 2. Although claimant explained that he did not tell Humphrey of these symptoms because he "wanted to come up with a better reason than mental health," it appears to us that physical symptoms such as claimant claimed he was experiencing would have provided a legitimate, non-embarrassing rationale for quitting work. Transcript at 13. The accuracy of claimant's contention that he was actually experiencing these

symptoms is further undercut by his statement that he did not seek medical treatment for them, and a nurse diagnosed him over the phone with "obviously [a] psychosomatic" disorder." Transcript at 13. Given the severity of the symptoms that claimant generally described, it is implausible that any reasonable health care professional would rule out an infection, a gastric disorder or some other physical ailment in favor of a psychosomatic disorder over the phone without first actually examining claimant or ordering tests. Based on the unexplained inconsistencies in claimant's testimony, claimant did not demonstrate, more likely than not, that the symptoms of vomiting, diarrhea and stomach problems caused him to quit work. However, even if claimant was experiencing such symptoms, a reasonable and prudent person, exercising ordinary common sense, would not have concluded that he needed to quit work until first consulting with a physician and determining that the symptoms could not reasonably be controlled by measures other than leaving work.

Claimant did not demonstrate good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-27424 is affirmed.

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

DATE of Service: December 23, 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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