

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1780

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On September 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83737). Claimant filed a timely request for hearing. On October 28, 2014, ALJ Clink conducted a hearing, and on October 30, 2014 issued Hearing Decision 14-UI-27916, affirming the Department's decision. On November 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dare to Care Learning Center, LLC employed claimant from July 8, 2013 to August 27, 2014 as an administrative assistant at the owner's certified nurse assistant school.

(2) On June 3, 2014, claimant and the owner were sitting at a table with a customer. Claimant mentioned personal information about another customer to the customer who was present. The owner kicked claimant in the ankle under the table to signal claimant to stop talking about the customer. Claimant continued to talk about the customer, and the owner kicked claimant again. Claimant told the owner that the kicks hurt, and asked the owner not to kick her again.

(3) After June 3, 2014, claimant was dissatisfied with how the owner treated her. On one occasion, the owner yelled at claimant at work.

(4) Claimant had difficulty sleeping at night due to stress from work. She did not discuss her stress or dissatisfaction at work with the employer before August 26, 2014.

(5) On August 26, 2014, the owner was dissatisfied with how claimant described the employer's payment plan options to a customer, and directed claimant to give the customer more information. Claimant told the owner she had given the customer payment information earlier that day. The customer told the owner she did not understand the payment options, and the owner insisted that claimant provide more information to the customer. Claimant became upset and asked the owner to finish the meeting with the customer. Claimant later told the owner she was upset by the incident with the customer.

(6) After work on August 26, 2014, the owner told claimant by email that she wanted to meet with claimant after work on August 27, 2014 to discuss how to improve their working relationship. She did not state she planned to discharge claimant.

(7) On August 27, 2014, claimant reported to work and notified the employer that she would quit work on August 29, 2014 because she was dissatisfied with her working conditions. After she gave notice to the owner, claimant told some of the employer's customers she was quitting work. The owner was dissatisfied that claimant was discussing her work separation with customers, and told claimant to leave work and not return.

CONCLUSIONS AND REASONS: The employer discharged claimant, not for misconduct, within 15 days prior to claimant's planned quit without good cause.

The first issue in this case is whether claimant quit work or was discharged. 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant notified the employer on August 27, 2014 that she was quitting work on August 29, 2014. However, the employer did not allow claimant to work through her notice period. Because claimant was willing to continue working for the employer until August 29, but was not allowed to do so by the employer, the August 27, 2014 work separation was a discharge.

OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. The employer discharged claimant on August 27, 2014 because claimant discussed her work separation with the employer's customers after she gave the employer notice of her planned quit. The record does not show claimant made derogatory comments about the employer. The employer failed to show claimant knew or should have known through prior training, experience or warnings that telling customers she had given notice to quit violated the employer's expectations. Nor do we find claimant's conduct so obviously inappropriate that we infer she knew or should have known as a matter of common sense. Absent a showing that claimant knew or should have known her conduct probably violated the employer's expectations regarding workplace behavior, we conclude the employer discharged claimant, but not for misconduct.

However, ORS 657.176(8) provides that when an individual has notified an employer that she will quit work on a specific date, and the employer discharged her, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that she is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned quit date. Claimant notified the employer she would end her employment on August 29, 2014. The employer

discharged her, not for misconduct, on August 27, 2014, less than 15 days prior to her planned quit date. Therefore, we must determine whether claimant's planned quit would have been without good cause.

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.

Claimant quit work because she was dissatisfied with the owner's behavior towards her. The owner occasionally yelled at claimant, and told her how to perform her work in front of a customer on August 26, 2014. Claimant also had difficulty sleeping, which she attributed to work stress. Claimant failed to show that her work conditions created a situation of such gravity that she had no reasonable alternative but to leave work. To the extent claimant left work because of the way the owner spoke to her on August 26, the record does not show that the employer's behavior was unreasonable. It is reasonable for an employer to expect employees to provide accurate information to customers, which may require repeating the same information. Claimant was dissatisfied that the owner sometimes yelled at her. The record does not show the owner used foul language, called claimant names, or threatened claimant with physical harm. Claimant did not establish that the owner's behavior was so egregious that no reasonable and prudent person would have continued working for her employer. Claimant did not show that it would have been futile to meet with the owner on August 27 to discuss her working conditions. Moreover, although claimant was experiencing sleep problems she attributed to work stress, the record does not show that her work environment or sleep problems were so severe as to leave her with no reasonable alternative but to quit work when she did.

In sum, claimant notified the employer of her intention to voluntarily quit work without good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits because the actual discharge not for misconduct occurred within the same week as the planned quit without good cause.

DECISION: Hearing Decision 14-UI-27916 is affirmed.

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

DATE of Service: December 31, 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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