

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1812

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115426). Claimant filed a timely request for hearing. On November 5, 2014, ALJ Frank conducted a hearing at which the employer did not appear, and on November 13, 2014 issued Hearing Decision 14-UI-28662, affirming the Department's decision. On November 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she contended, among other things, that ALJ did not adequately consider the evidentiary documents she presented at hearing before concluding in Hearing Decision 14-UI-28662 that she did not demonstrate good cause for leaving work. While claimant suggested in her argument that the employer's failure to appear at the hearing meant that it did not disagree with the statements that she made in Exhibit 1, its failure to contest claimant's evidence did not relieve claimant from the burden of demonstrating that the incidents, as she recounted them, were good cause for leaving work. Nor did the employer's failure to appear operate to absolve the ALJ from his responsibility to determine independently whether claimant's evidence, even if un rebutted, showed the grave circumstances necessary to constitute good cause to leave work. Claimant's further assertion that the ALJ appeared not to have thoroughly reviewed the volume of documents that she submitted in advance of the hearing and "made the proclamation" at hearing that she was "being insubordinate and at fault" is not supported by the audio record. Claimant's Written Argument at 1. Although the ALJ might not have demonstrated intimate familiarity with those documents when he first addressed them at hearing, he paused on several occasions during claimant's testimony to review the relevant documents and to question claimant about the statements she made in them. Audio at ~9:54, ~11:36, ~12:16, ~13:30, ~14:12, ~14:36, ~15:43~17:35, ~18:50, ~19:23, ~20:09, ~21:24. The ALJ did not accuse claimant of having been insubordinate to him at the hearing, but merely asked her whether the final incident in which her mentor allegedly became irritated and yelled at her might have been caused by the mentor's perception that she was not following his instructions. Audio at ~15:20, ~15:43, ~16:43. EAB

has reviewed the hearing record in its entirety and there is nothing in it demonstrating that the ALJ was biased against claimant's position, became biased during the hearing or failed to consider the documents adequately during the hearing or in advance of preparing Hearing Decision 14-UI-28662. The hearing record shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). That the ALJ's ultimate decision was not in favor of claimant is insufficient to demonstrate that claimant was denied a fair hearing. EAB considered claimant's remaining arguments when reaching this decision.

FINDINGS OF FACT: (1) Goodwill Industries of the Columbia Willamette employed claimant as a human resources assistant from February 4, 2013 until September 10, 2014.

(2) Beginning in approximately September 2013, claimant was assigned a workplace "mentor." Audio at ~8:27. Claimant's mentor was an intervention specialist. Claimant respected her mentor and thought that they had a very good working relationship.

(3) In November 2013, claimant asked the director of human resources if she could assist her mentor in handling some new duties that related to the employer's terminations of employees. The director and the mentor agreed to allow claimant to assume these new duties. Exhibit 1 at 15. These new duties were not part of claimant's job description. Claimant thought that the pay increase the employer gave her for performing these new duties was inadequate. Exhibit 1 at 8.

(4) On occasion during claimant's employment, some coworkers and superiors in the human resources office made what claimant perceived as derogatory references to her or her other coworkers. These references included statements such as "idiot," "moron," "stupid is as stupid does" and "Jesus Christ." Exhibit 1 at 8. On at least one occasion, a coworker pointed and shook her index finger at claimant. Once, a coworker called claimant a "bitch." Exhibit 1 at 8.

(5) In early summer 2013 or 2014, claimant returned from a week's vacation. One of the three coworkers who worked in the same office as claimant told claimant that she had removed an inappropriate sign from claimant's desk and had taken it to the assistant director's office. Claimant went to the assistant director's office and saw the sign, which stated, "Want to learn how to grow your own dope? Lift here." Lifting a tab revealed the answer, "Plant a man." Exhibit 1 at 27. Claimant told the assistant director she had not placed the sign at her desk. Claimant confronted the coworker who she thought had placed the sign at her desk, and that coworker admitted that he had done so and apologized to claimant. That coworker also sent emails to the three coworkers in claimant's office admitting that he, and not claimant, was responsible for the appearance of the inappropriate sign at claimant's desk during her vacation. Exhibit 1 at 27. Claimant was offended that none of the three coworkers apologized to her for assuming that she had posted the sign in her work area, and never referred again to the sign. Exhibit 1 at 27.

(6) In June 2014, claimant requested that the HRIS specialist allow her to work a flexible schedule in which she left work at 2:00 p.m. every Friday, as one of her coworkers had been allowed. Exhibit 1 at 33, 34. The HRIS specialist did not allow claimant to work the flexible schedule. Claimant thought that the HRIS specialist's decision was not fair. Exhibit 1 at 9.

(7) In approximately late July 2014, claimant was instructing a clerical assistant in performing and prioritizing her daily work tasks. The assistant to the director overheard this conversation and told claimant in the presence of the clerical assistant that she was giving the clerical assistant "bad advice." Exhibit 1 at 29. The next day, claimant discussed this incident with the assistant to the director and told her that she had been following instructions she had received from the HRIS specialist about the clerical assistant's duties. Claimant told the assistant to the director that she had felt humiliated in front of the clerical assistant. Exhibit 1 at 30. The assistant to the director agreed that she had not overheard the entire conversation, apologized to claimant for her behavior on the earlier day and told claimant that she had already apologized to the clerical assistant for disagreeing with claimant's instructions to the clerical assistant. Exhibit 1 at 31. Claimant did not think that the assistant to the director's apology was a sufficient response to the situation.

(8) Before August 22, 2014, claimant, on occasion, approached the director of the employer's human resources department and the intervention specialist to raise various concerns about her coworkers' and supervisors' treatment of her. Neither of these supervisors took any disciplinary actions against these coworkers or supervisors. Claimant perceived that they did not take her concerns seriously.

(9) On Friday, August 22, 2014, at approximately 4:00 p.m., claimant asked her mentor if she could leave work early that day. Claimant told the mentor that she had completed all of her work for that week. Exhibit 1 at 42. At that time, no one else remained in the workplace. The mentor told claimant that his own work was not completed and that he was "disappointed" in claimant for asking to leave work early. Exhibit 1 at 42. Claimant perceived that her mentor was irritated with her. Claimant told the mentor that she was willing to stay until the scheduled end of her shift at 4:30 p.m. The mentor replied, "You wanted to leave. Just go. Get out of here." Exhibit 1 at 42. Claimant stated that she was not going to go anywhere. The mentor then yelled at claimant, "If you are not going to be productive, get out." Exhibit 1 at 42. When claimant still refused to leave, the mentor stated "Oh. So now you are going to stay just to piss me off?" Exhibit 1 at 42. The mentor then left claimant's work area and, from his office, continued to tell claimant to leave the workplace. Claimant stayed at work until the scheduled end of her workday at 4:30 p.m. Claimant did not know how to react to her mentor's behavior because it was completely "out of character." Audio at ~19:04.

(10) After the end of the workday on August 22, 2014, claimant drafted a resignation note to the employer stating that her last day of work was going to be September 10, 2014. On August 25 or 26, 2014, claimant submitted her resignation note to the employer. Prior to submitting her resignation, claimant did not attempt to discuss the incident of August 22, 2014 with her mentor's supervisor or with the employer's director of human resources.

CONCLUSIONS AND REASONS: Claimant voluntarily left work 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.

From claimant's testimony at hearing, it appears that she felt offended by some disparate events that occurred in the workplace, and thought that insufficient steps were taken to rectify what she perceived as improper behavior toward her. However, the incident in which the coworker placed an arguably inappropriate sign on claimant's desk was followed by the coworker apologizing to claimant for what he had done and letting claimant's coworkers know he had placed the sign on claimant's desk. Claimant's objection, that the other coworkers also did not apologize to her, does not appear reasonable when the other coworkers had not participated in placing the sign at her desk. The incident in which the assistant to the director had made a negative comment to claimant about claimant's instructions to the clerical assistance, which the clerical assistant witnessed, was followed by the assistant apologizing to claimant and telling claimant that she had also apologized to the clerical assistant. It is not clear why claimant thought the assistant to the director's response was insufficient. These apparently voluntary and sincere apologies reasonably should have resolved any offense that claimant experienced from them, whether or not the employer took any further actions to discipline these employees for their behavior. A reasonable and prudent person, exercising ordinary common sense, would not have concluded that these incidents, once they were apologized for, were grave reasons to leave work.

Claimant agreed that her mentor's irritation with her on August 22, 2014 was out of character for him and he had never before behaved in that manner. Audio at ~19:10, ~21:50. Claimant stated that she worked well with her mentor and greatly respected him and they were friends outside of work. Audio at ~8:00, ~12:09. Claimant's principal objection to her mentor's behavior that day was that it was "unprofessional" and she discerned a "foul attitude" in it. Audio at ~17:11, ~18:50. Accepting claimant's testimony about her mentor's behavior, it was at worst a temporary expression upset. While yelling at subordinates is not condoned, a reasonable and prudent employee would have placed it in the perspective of her overall relationship with the mentor. Because the mentor's behavior that day was aberrational, a reasonable and prudent employee would not have considered it to present an objectively grave reason to quit work unless it recurred over time. Claimant presented no such evidence.

Although claimant also justified her decision to leave work on the fact that she volunteered for duties that were not in her job description and she thought that she did not receive adequate pay for these extra duties, she did not show that the level of compensation that she received was an objectively grave circumstance. Exhibit 1 at 8. There was no evidence that, viewed objectively, the additional duties cause any harm to claimant. Claimant did not show, for example, that the additional duties overburdened her, that the employer compelled claimant to assume the additional duties and refused to re-assign them to another employee or that the employer was, somehow, taking undue advantage of claimant's services. Claimant also did not show that the employer's decision not to allow her a flexible schedule, as it had allowed a coworker, was a grave reason for her to leave work, particularly since she presented no evidence as to the reasons that she desired the flexible schedule and no evidence that her circumstances were similar to that of her coworker. Exhibit 1 at 33, 34. Although claimant contended that some of her coworkers made unflattering references to her and to other coworkers and sometimes used mildly profane language, claimant did not present sufficient evidence about the context in which such language was used to support the inference that the language was not humorously intended or that the language created a work environment that was objectively injurious to claimant rather than one that she merely desired were otherwise. Exhibit 1 at 8. In sum, claimant did not meet her burden to show

that any of these alleged reasons for leaving work, considered alone or in combination, were reasons of such gravity that no reasonable and prudent person would have remained working for an addition period of time.

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

DECISION: Hearing Decision 14-UI-28662 is affirmed.

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

DATE of Service: January 23, 2015

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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