

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1894

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84354). Claimant filed a timely request for hearing. On December 2, 2014, ALJ Murdock conducted a hearing, and on December 5, 2014 issued Hearing Decision 14-UI-29909, affirming the Department's decision. On December 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) At Home Senior Solutions, Inc. employed claimant from May 31, 2014 to September 30, 2014 as a caregiver.

(2) On September 13, 2014, claimant was admitted into the hospital for respiratory failure and was unable to work. On Monday, September 22, 2014, the employer's scheduler asked claimant if she would be able to return to work "next week." Audio Record at 12:13 to 12:49, 30:45 to 31:28. Claimant confirmed that she could return to work then. The scheduler put claimant on the schedule to work September 26 and 27, 2014. Each Friday or Saturday, the employer posted the schedule online for the upcoming Monday through Sunday. Claimant did not check the schedule for September 22 through 28, 2014 because she understood "next week" to be the week of September 28, 2014.

(3) On September 26, 2014, claimant did not report for her scheduled shift. The employer's office manager called claimant to find out why she did not report to work and began yelling at claimant. Claimant told the office manager she would not listen to her yell. The office manager told claimant she needed to report to the employer's office to discuss the September 26 incident. The manager did not plan to discharge claimant, or tell claimant it intended to do so. Claimant said, "Okay," and ended the conversation. Audio Record at 28:58 to 29:27. The manager took claimant off the schedule for September 26 and 27, 2014. Claimant understood the employer expected her to report to work to discuss the September 26 incident.

(4) On September 27, 2014, claimant checked her work schedule online and saw she was not on the work schedule. Claimant did not report to the employer's office, or otherwise contact the employer to

discuss what occurred on September 26, 2014 because she assumed the employer was discharging her, and was dissatisfied with the employer's manner of communicating with her.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without good cause.

Work Separation. The parties disagreed as to the nature of claimant's work separation, with the employer asserting claimant quit and claimant asserting the employer discharged her. 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 testified that she assumed the employer was going to discharge her because she was not on the schedule to work after September 26, 2014. Audio Record at 30:13 to 30:40. However, the manager directed claimant to report to the employer's office to discuss her absence from work on September 26, and did not tell claimant it planned to discharge her at that meeting. The preponderance of evidence shows the employer had continuing work available for claimant because it told her to report to the employer's office. Claimant did not meet with the employer to address the September 26 incident, or arrange a time to do so. The work separation occurred because claimant failed to communicate her willingness to work, and not because the employer prevented her from working. Claimant could have continued to work for an additional period of time, and her failure to report to the office shows she was unwilling to do so. Thus, the work separation was a voluntary leaving.

Voluntary Quit. 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 quit work, in part, because she assumed the employer planned to discharge her when it removed her from the work schedule. However, the office manager told claimant to report to work to discuss the September 26 incident, and did not tell claimant it was discharging her. Claimant did not report to work or otherwise address the September 26 incident with the employer again after September 26. Rather than assuming the employer would discharge her, claimant had the reasonable alternative of meeting with the employer to discuss why she did not report to work on September 26. To the extent claimant quit work because she was dissatisfied with the employer's manner of communicating with her, the employer had a right to expect employees to follow its reasonable attendance requirements. Although the manager's conduct in yelling at claimant was unprofessional, claimant failed to show that the manager's behavior was so oppressive that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant did not show the manager used foul

language, called claimant names, threatened her physically, or had ever yelled at her on any other occasion. Nor did claimant show that the miscommunication about her work schedule created a situation of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

We therefore conclude that claimant quit work without good cause, and that she is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-29909 is affirmed.

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

DATE of Service: January 28, 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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