

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0032

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 12559). The employer filed a timely request for hearing. On December 29, 2014, ALJ Wipperman conducted a hearing, and on January 2, 2015 issued Hearing Decision 15-UI-31255, concluding claimant voluntarily left work without good cause. On January 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon Health Authority employed claimant to process applications for the Oregon Health Plan from October 1, 2014 until October 9, 2014.

(2) During the entire time claimant was employed, the employer was training claimant and several other new hires in the procedures necessary to process applications. Due to the timelines imposed by the Affordable Care Act, the employer had condensed its usual multi-week training program into a very few days. The pace of the accelerated training was very rapid, and it took place in a room with background noise that made it difficult for claimant and some of the other trainees to hear the information that was presented. The employer told the trainees that a great deal of complex information was being presented and that it did not expect everyone in the training to understand it after the initial presentation and instruction. The employer told the trainees "not to worry," if they did not master the material during the training. Audio at ~16:37. Claimant felt "overwhelmed" by all of the information that was presented during the training, did "not understand it" and could not "comprehend it." Audio at ~15:40, ~17:10.

(3) On October 9, 2014, although claimant was scheduled to continue her training, she did not report for work. On that day, claimant called her supervisor and left the supervisor a voicemail message stating that she was so overwhelmed by the training that she was unable to continue with it. Audio at ~15:52. The employer interpreted claimant's message as claimant's resignation.

(4) On October 10, 2014, claimant called her supervisor and apologized for her inability to understand the material presented during the training. During her conversation with the supervisor, claimant stated that she was "willing to come back [to work] and to try again if someone could work with me [to understand the material]." Audio at ~17:33. The supervisor asked claimant "how do we know it won't happen again?" and claimant responded "I guess there's no way of knowing, but I'm willing to come back so . . . help me out here." Audio at ~ 17:40. Claimant also asked the supervisor if there were any other capacities in which she could work for the employer. The supervisor stated that she would confer with the employer's human resources department to determine if claimant would be allowed to return to work. The supervisor later called claimant and told her that "the decision ha[d] been made" to accept claimant's resignation of October 9, 2014.

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

The first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

At hearing, the employer contended that claimant stated in the voicemail message that she left for her supervisor on October 9, 2014 that she was "resigning" from work. Audio at ~11:52. Claimant contended that she did not state in that call that she was "resigning," and that she had merely stated that she was "overwhelmed" and had asked for additional training. Audio at ~15:39, ~19:27. Claimant's position that she did not indicate in that message that she intended to quit work is belied by the other evidence that she presented at the hearing. If claimant had remained willing to work for the employer, it does not make sense that she would not report for work on October 10, 2014. If claimant had not stated an intention to quit work on October 9, 2014, it also does not make sense that she would tell her supervisor repeatedly during their conversation on October 10, 2014, that she was "willing to come back" to work. Audio at ~15:16, ~ 17:33, ~17:46. As well, although claimant ultimately testified that she had not used the word "resigned" in her October 9, 2014 message, she did not dispute the reasonableness of the employer's construction of that message as stating in substance her intention to quit work. Audio at ~19:27. Based on the undisputed facts in this record and the reasonable inferences to be drawn from them, it appears most likely that claimant stated to her supervisor on October 9, 2014, that she was unwilling to continue working for the employer.

Given that claimant quit on October 9, 2014, her October 10, 2014 telephone call to her supervisor appears most reasonably to have been an attempt to withdraw that resignation when she stated at that later time that she was willing to return to work. However, it is well-established that once a claimant has provided notice to the employer that she intends to leave work, a later attempt to rescind that initial decision, which the employer refuses to accept, does not transform the work separation from the initial voluntary leaving that it was to a discharge on the date that the attempt at rescission is rejected. *See Counts v. Employment Department*, 159 Or App 22, 976 P2d 96 (1999); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). Despite claimant's unsuccessful attempt to withdraw her resignation on October 10, 2014, the work separation remained a voluntary leaving on October 9, 2014.

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.

There was no evidence in the record that claimant's initial difficulty in understanding the intricacies of the training information that the employer provided was a grave reason for her to leave work. Claimant candidly admitted that the employer had reassured the trainees "not to worry" if they did not understand the training information, and did not suggest that the employer had ever stated that it intended to take disciplinary measures based on an initial lack of comprehension. Audio at ~16:24. Moreover, claimant stated that the difficulties she experienced in absorbing the employer's training information was shared by many of the trainees, and it appears implausible that the employer would not take account of this fact in gauging the performances of all its new trainees, including claimant. Audio at ~14:50, ~19:08. A reasonable and prudent trainee employee, exercising ordinary common sense, who was receiving accelerated training, would not have concluded that she needed to leave work when she did not immediately understand all of the training information to which she was exposed, particularly when the employer had reassured the trainees that it did not expect them all to have instant proficiency and when claimant's difficulties were not unique to her. Claimant did not meet her burden to demonstrate that the reasons she provided for leaving work when she did were objectively grave.

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

DECISION: Hearing Decision 15-UI-31255 is affirmed.

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

DATE of Service: March 4, 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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