

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0056

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161753). Claimant filed a timely request for hearing. On January 12, 2014, ALJ Holmes-Swanson conducted a hearing at which the employer did not offer evidence, and on January 16, 2015 issued Hearing Decision 15-UI-32027, affirming the Department's decision. On January 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she presented new reasons for her decision to leave work and offered new facts in support of that decision. Claimant did not explain why she did not present these reasons or this new information during the hearing, and otherwise failed to show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Carlton Corner Service employed claimant from February 11, 2008 until November 29, 2014, last as an assistant manager in its store. As assistant manager, claimant supervised other employees, prepared the employees' work schedules, balanced the tills, performed cash handling duties and resolved various employee and customer problems.

(2) In approximately 2004, claimant entered treatment for a gambling problem and successfully completed that treatment. In approximately 2012, the employer's management changed and a new general manager oversaw claimant's work. Claimant disliked some of the changes that were implemented by the new manager. Claimant also thought that the new general manager gossiped about certain employees and spread rumors about them in the workplace. Claimant perceived that there were many rumors in the store about various employees that she supervised. The employer's owner knew that claimant had previously been in treatment for gambling.

(3) In approximately October 2014, the employer's general manager had problems one day in balancing the employer's till and thought that one or more employees might have taken money from the employer. The general manager mentioned to one of claimant's subordinate employees that he suspected claimant was gambling and had stolen the missing money. That employee did not tell claimant what the general manager had said. That employee did not think that claimant had stolen any money and did not agree with the general manager's suspicions.

(4) November 29, 2014, was claimant's day off from work. On that day, a store employee called claimant to tell her that the general manager had said she was "gambling and stealing." Audio at ~18:08. Later that day, the same employee to whom the general manager had spoken in October 2014, called claimant and, during that conversation, also told claimant that the general manager had previously accused her of gambling and stealing from the employer's tills. After the second phone call, claimant called the general manager at the store to tell him that she was going to quit work because of the general manager's accusations. The general manager then told claimant that "he was gonna get [her]." Audio at ~18:53. Shortly thereafter, claimant went to the store and turned in her work keys to the general manager. When she was turning in her work keys, the general manager again told claimant that "he was gonna get [her]." Audio at ~20:02. Claimant did not know what the general manager meant by these statements.

(5) Claimant decided to quit work on November 29, 2014 because she thought that, by making statements that accused her of dishonesty, the general manager had undermined her ability to effectively manage the employees who were subordinate to her and because she thought the general manager had "defam[ed] [her] character." Audio at ~ 21:03, ~21:48. Before ending her employment, claimant had not experienced any difficulties in managing the subordinate employees or having them respect her authority.

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 his employer for an additional period of time.

Despite the contentions she made in her written argument, claimant testified with certainty at the hearing that she left work because of the reports to her on November 29, 2014 that the general manager had accused her of gambling and stealing from the employer. Audio at ~17:27, ~18:42, ~26:25. Claimant generally asserted that, by making such false statements about her honesty her, the general manager had defamed her character and had undermined her ability to effectively direct her subordinates because they would no longer trust her. Audio at ~20:43, ~21:42, ~23:53. Claimant described a workplace that was and had been rife with rumors for some years, and the one example that she gave of an unfounded rumor circulating about an employee had not caused that employee to quit work and was one that claimant

herself, as one of the employer's employees, had apparently not believed. Audio at ~30:27. While claimant's concern that the general manager's statements might undermine her managerial authority was understandable, it appears that claimant was not made aware of the statements for at least a month after they were first made and had not experienced any actual erosion of her authority during that month. Audio at 34:39. Indeed, the one witness claimant called to testify about the impact of the general manager's accusations, stated flat out that she had never believed in the truth of the general manager's suspicions about claimant. Audio at ~35:20. From that witness's testimony, which was the only evidence on the objective impact of the general manager's statements, it appears that claimant was well-respected in the workplace and not likely that the subordinate employees would have been swayed in their beliefs about claimant's good character, especially since it appears that the general manager's unfounded suspicions were generally viewed as an "ongoing problem" in the workplace. Audio at ~33:37. While statements of the type that claimant contended that the general manager made about her were not appropriate, claimant did not establish that they were likely to be believed by the employees that she supervised or that any harm to her reputation was likely to result. On these facts, a reasonable and prudent assistant manager, exercising ordinary common sense, would not have concluded that grave harms were likely to result to her or to her reputation for good character based on the suspicions of a general manager who was not well-respected in the workplace and whose accusations about employees were often doubted. At a minimum, a reasonable and prudent assistant manager would not have quit work before confirming that the general manager's statements about her dishonesty had been generally believed by the employees subordinate to her.

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

DECISION: Hearing Decision 15-UI-32027 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, 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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