

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0062

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75908). Claimant filed a timely request for hearing. On January 12, 2015, ALJ Shoemake conducted a hearing, and on January 13, 2015, issued Hearing Decision 15-UI-31750, affirming the Department's decision. On January 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). On appeal, claimant asserted that she did not offer the information at hearing because the ALJ only asked her about the two incidents that occurred during the last two days of her work for the employer. At hearing, however, claimant offered a letter with a detailed description of all the problems she encountered during the entire three week period she worked for the employer; the ALJ admitted this letter as Exhibit 1. In addition, when the ALJ questioned claimant about what issues she wanted the ALJ to consider, claimant clarified that those issues were the ones described in Exhibit 1. Audio Record ~ 12:50 to 13:15. Claimant's assertion that she had insufficient opportunity at the hearing to present evidence regarding the issues she wanted to have considered is therefore without merit. We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Village Properties employed claimant as an administrative assistant from October 27, 2014 to November 13, 2014. The employer, a property management company that also provided maintenance and housekeeping services, was owned by Mark and Kate Halvorsen.

(2) When claimant was hired, she understood that she would be working as an administrative assistant for the employer's maintenance manager. However, on November 12, Kate Halvorsen spoke privately

with claimant, and after asking her about how her job was going, stated, “You know, you’re really in charge here” and told claimant that she wanted claimant to monitor “maintenance expenses and housekeeping duties” to ensure the charges were appropriate and responsibilities were being met. Exhibit 1; Audio Record ~ 13:00 to 16:45. Claimant felt she had been misled at hire and was being asked to manage without being paid as a manager, which upset her.

(3) On November 13, 2014, claimant’s supervisor, Arleigh, told her to perform a computer task in particular way and the housekeeping supervisor told her to perform it a different way. Claimant’s supervisor raised her voice at the housekeeping manager, stating, “I want her to do it my way.” Audio Record ~ 11:00 to 12:00. The housekeeping manager became upset, almost tearful, and after being told that most employees feared the owners and disliked each other, claimant concluded the office environment was dysfunctional.

(4) On the evening of November 13, claimant notified the owners by email that she was resigning. Claimant quit because she believed the employer expected her to perform management duties at administrative assistant pay. Before resigning, claimant did not discuss her concern with the owners.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

At hearing, claimant testified that she would not have quit work when she did if the owner Kate had not told her “you’re really in charge here” on November 12, 2014. Audio Record ~ 19:06 to 19:45. Accordingly, it was that statement that triggered claimant’s decision to quit work on November 13, the proximate cause of that decision and the proper focus of our analysis.

Claimant quit work because she was upset the owner had apparently misled her at hire and expected her to manage aspects of the maintenance and housekeeping departments at administrative assistant pay. Claimant failed to show that the owner’s statement created a situation of such gravity that she had no reasonable alternative but to leave work when she did. Claimant did not discuss the situation with either owner to clarify their work expectations of her before quitting based on her coworkers’ reported fears of the owners. However, claimant did not assert that either owner had given her any reason to be afraid of them. On this record, claimant failed to show that no reasonable and prudent administrative assistant in her circumstances, interested in maintaining her employment and exercising ordinary common sense, would have concluded she had no reasonable alternative but to quit work before even discussing the issue with the owners.

To the extent claimant left work due to what she described as a hostile work environment, claimant failed to establish that she quit work with good cause. Claimant admitted that although her supervisor had raised her voice at the housekeeping manager about doing things “her way”, she did not yell at her. Although their interaction may have made claimant uncomfortable and she had heard from coworkers that that most employees feared the owners and disliked each other, she did not establish that the office environment was so hostile that no reasonable and prudent administrative assistant in her circumstances would have continued working for her employer. Although claimant reported that she could not sleep the night before she quit and was concerned about her physical health, the record does not show that her medical condition was so serious that it left her with no reasonable alternative but to quit work when she did.

Claimant had the burden to show that she quit work when she did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet her burden and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-31750 is affirmed.

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

DATE of Service: March 10, 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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