

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0255

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 150203). Claimant filed a timely request for hearing. On March 4, 2015, ALJ S. Lee conducted a hearing, and on March 6, 2015 issued Hearing Decision 15-UI-34755, affirming the Department's decision. On March 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Imagination International, Inc. employed claimant from September 9, 2013 to January 15, 2015 as a general manager.

(2) Claimant worked for Light Beam, Inc. (LBI), one of the employer's two divisions. Claimant reported directly to the vice president of LBI. During 2014, the employer's president made several comments to claimant about the LBI vice president's divorce and personal relationship with another employee, allegedly including that he would "make the [LBI vice president] 'pay' for his divorce." Transcript at 11. The comments made claimant feel uncomfortable and caused him to distrust the employer's president.

(3) On December 30, 2014, the LBI vice president agreed to resign at the employer's request.

(4) On January 5, 2015, the employer's president and finance manager met with claimant to tell him the LBI vice president had resigned. The employer did not tell claimant the details of why the vice president agreed to resign, due to ongoing litigation. Claimant and the employer's president had a heated conversation about several business-related and private topics, including the alleged statement the president made about "making the [LBI vice president] 'pay' for his divorce." The president denied

having made the statement. Claimant told the president he could not trust him if he denied having made the statement. The employer's president told claimant he wanted claimant to continue working for LBI, but that it was claimant's decision, and that the employer would allow him to continue working while he looked for other work if he decided to leave.

(5) On January 14, 2015, claimant requested a meeting for the next day with the finance manager and president. On January 15, 2015, claimant told the president he continued to distrust him because he denied making the statement about the LBI vice president's divorce, and because of how he handled other past employment situations. The president told claimant he could continue to work for LBI and seek work elsewhere. Claimant told the president he could not continue to work for the company. The president told claimant to get his things and go. Claimant collected his belongings and left work.

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

Work Separation. The first issue in this case is the nature of the work separation. 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) (August 3, 2011). 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

It is undisputed that the employer's president told claimant on January 5 and 15, 2015 that he could continue to work for the employer indefinitely, or at least while he sought other work. Claimant told the employer on January 15 that he could not continue to work for the company because he distrusted the employer's president. The record therefore shows that claimant could have continued to work for the employer after January 15, but was unwilling to do so. The work separation therefore is a voluntary leaving. The president's subsequent statement that claimant should collect his belongings and leave does not change the nature of the work separation to a discharge.

Voluntary Quit. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

Claimant quit work because he distrusted the employer's president after he denied making a statement about the vice president's divorce. Claimant did not show by a preponderance of the evidence that the employer's president lied about the statement, or that he mistreated the vice president due to his divorce. However, even assuming the president made the alleged statement, he attempted to resolve claimant's concerns by discussing the matter with claimant on January 5 and 15, and assuring claimant he wanted to "get past all of this difficulty" and have claimant

continue working with the company, even if claimant chose to do so only until he found other employment. Transcript at 32. Moreover, the record does not show that the president's alleged statement about the vice president adversely affected claimant or his working conditions to such a degree that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

Claimant voluntarily left work without good cause, and is disqualified from receiving unemployment insurance benefits because of his work separation

DECISION: Hearing Decision 15-UI-34755 is affirmed.

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

DATE of Service: April 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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