

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0430

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95324). Claimant filed a timely request for hearing. On April 1, 2015, ALJ Yee conducted a hearing, and on April 3, 2015 issued Hearing Decision 15-UI-36292, affirming the Department's decision. On April 16, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Adventures Unlimited, Inc. employed claimant as an infant teacher in its childcare facility from January 12, 2011 until January 13, 2015.

(2) Over time, the employer's owner became displeased about claimant's attitude and behavior at work, particularly claimant's temper. The owner spoke to claimant several times about her behavior when angry. On January 12, 2015, claimant and another of the employer's teachers had a disagreement at work. Claimant complained to the owner, and the owner had both teachers meet to try to resolve the differences between them. Claimant and the other teacher argued. Claimant became upset, left the meeting and loudly slammed the door behind her.

(3) During the evening of January 12, 2015, the employer's owner sent claimant three text messages that told claimant to take the next few days off from work. The owner thought that claimant had not taken seriously the past oral warnings she had given to her and wanted claimant to know that she might be discharged if behaviors similar to those exhibited on January 12, 2015 continued. The owner intended to draft a letter to claimant to inform claimant of her displeasure over claimant's behavior that day and at other times. Claimant replied to the owner's text messages by stating, without explanation, that she was going to come in to work the next day. That night, the owner drafted a letter to give to claimant when she came to the workplace on January 13, 2015.

(4) On January 13, 2015, claimant and a male acquaintance arrived at the workplace. The owner met them, gave claimant the letter and asked claimant to read it. The letter described certain instances of claimant's behavior and workplace performance that the owner did not like, including the incident on January 12, 2015 and other prior incidents. The letter also advised claimant that the owner intended to send claimant home for "few days" and that the owner was going to discharge claimant if she refused to take time away from work. Transcript at 16. The letter stated, "If you agree to take a few days off, I will not terminate you at this time. I will again give you another chance." Transcript at 16. The letter also advised claimant that she would be discharged if in the future she did not comply with any of the employer's standards. The letter concluded with line for claimant to sign it.

(5) During the January 13, 2015 meeting, after claimant had read the letter, she told the owner that it did not accurately describe the events to which it referred. After some discussion, claimant refused to sign the letter. The owner told claimant, "I'm not asking you to agree with it [the letter]. I'm asking you to read and sign it." Transcript at 56. Claimant continued to refuse to sign the letter. The owner ultimately told claimant, "Your two choices are to sign it [the letter] [and] go home for three days" or "[I] will be forced to fire [you]." Transcript at 6, 40, 41, 56. Claimant continued to protest. The owner told claimant, "Let me know what you decide [about signing the letter or being discharged]." Transcript at 17, 28, 33. Claimant then left the meeting. The employer thought that claimant was going to take the three days off to decide whether she would sign the letter.

(6) After January 13, 2014, claimant had no further communications with the owner and did not return to the workplace. Claimant voluntarily left work on January 13, 2015.

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

The first issue that this case presents is the nature of the work separation. Claimant contended that the owner discharged her on January 13, 2015 when she stated she would be "forced" to discharge claimant if she did not sign the letter. Transcript at 5, 6. The owner contended that claimant voluntarily left work when she did not return to the workplace after January 13, 2015. Transcript at 17, 24, 28. If the 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).

Although the owner denied that she presented claimant with the option of signing the letter or being discharged, we accept claimant's testimony about what was said during the January 13, 2015 as accurate for purposes of this discussion. Transcript at 28. By claimant's account, the owner told her at the meeting that if she did not decide to sign the letter the owner was going to be "forced" to fire her. Transcript at 6. Claimant agreed that the owner did not give her a deadline by which she needed to express her willingness to sign the letter or her discharge would be effective. Transcript at 41. Claimant did not assert that the owner unequivocally told her she was discharged during the January 13, 2015 meeting because she did not immediately agree to sign the letter. As of January 13, 2015, it appears that the owner had expressed only a conditional intention to discharge claimant if by some unspecified future time she had not agreed to sign the letter. Because the owner had not communicated a present intention to discharge claimant, claimant was the first party to objectively manifest an unwillingness to continue working by not returning to work after January 13, 2015. Claimant was the first party to take steps that

unequivocally sever the work relationship. Claimant's work separation was a voluntary leaving on January 13, 2015.

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 her employer for an additional period of time.

Claimant left work because she was unwilling to sign the owner's letter criticizing aspects of her work performance. Claimant did not show that signing the letter, even if contained inaccuracies about the events it recounted, would give rise to grave consequences for her. Although claimant repeated many times at hearing that she felt offended by the allegedly inaccurate content of the letter and disagreed with it, she did not establish that the owner's intention in having her sign it was other than merely to document that claimant had received what amounted to a disciplinary warning. Transcript at 5, 10, 18. Other than vaguely stating that the contents of the letter might "go on my record," claimant did not demonstrate that she would be subjected to any specific harm by virtue of having signed the letter when in all likelihood the owner intended to place it in her personnel file, whether or not she signed it. Transcript at 10. Claimant did not meet her burden to show that signing the letter was a grave reason for leaving work. Claimant also did not show that she had no reasonable alternatives to leaving work when she did to avoid the consequences of signing the letter. Rather than quitting, claimant reasonably could have drafted her own rebuttal to the owner's letter, or placed comments on the face of the warning letter that indicated she did not agree with the employer's accounts of the incidents described in it. As well, a reasonable and prudent employee, exercising ordinary common sense, who disagreed with the contents of a warning letter issued to her, would not have quit work over the matter of signing the letter, but would have continued to work unless or until the employer discharged her for not signing it.

On these facts, claimant did not show that she left work for grave reasons or that there were no reasonable alternatives available to her other leaving. 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-36292 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating

DATE of Service: June 15, 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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