

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0448

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73420). Claimant filed a timely request for hearing. On March 25, 2015, ALJ Vincent conducted a hearing, and on April 1, 2015 issued Hearing Decision 15-UI-36133, affirming the Department's decision. On April 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but 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 claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Leslie Jordan Inc. employed claimant from August 22, 2008 to October 29, 2014 as a pattern maker, designer, and in production.

(2) On October 29, 2014, claimant and the owner had a meeting to discuss the performance of claimant's trainee, patterns, business costs, and problems with the fit of the employer's products. Claimant was upset by the conversation, slammed the door and exited the owner's office, and went to her work area.

(3) The production manager heard the door slam, saw claimant was upset, and asked her what happened. Claimant stated she was "done" and was "leaving." Audio Record at 30:59-31:03. The production manager tried to calm claimant down, and told her to "think about it." Audio Record at 31:03-31:10. Claimant did not state she had been discharged. She packed her belongings and left work.

(4) Claimant did not attempt to return to work after October 29, 2014. The employer had continuing work available for claimant after October 29, 2014.

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

Work Separation. The parties disagreed as to the nature of the work separation, with the employer asserting claimant quit work on October 29, 2014 when she left work and did not return, and claimant asserting the owner told her the employer was discharging her. Audio Record at 11:50-12:14. 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) (August 3, 2011). 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

At hearing, the owner denied that she told claimant at the October 29, 2014 meeting that the employer was discharging her. Audio Record at 23:27-23:35. After claimant left the meeting and the production manager asked her what had happened, claimant did not tell the production manager she had been discharged. Instead, claimant indicated she was quitting work by saying she was “done” and was “leaving.” Moreover, when the production manager told claimant to “think about it,” claimant responded by explaining she had been discharged. At hearing, claimant argued that the employer was eliminating her position, but the owner testified that the business was growing, and the owner hired a replacement for claimant immediately. Audio Record at 24:17-26:51. The preponderance of evidence shows the employer had continuing work available for claimant, and that claimant left work on October 29, 2014. Thus, the work separation is a voluntary leaving.

Voluntary Quit. 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.

The record shows claimant reported to work on October 29, 2014, was upset by what was discussed during her meeting on that day with the owner, left work, and never returned to work. More likely than not, claimant quit work on October 29, 2014 because she was upset by the owner’s statements about pattern making to claimant during their meeting. Although claimant was upset by the conversation with the owner, the record does not show the conversation created a situation so grave that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work.

Claimant therefore failed to establish that she quit work with good cause, and she is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 15-UI-36133 is affirmed.

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

DATE of Service: June 8, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.