

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0579

Reversed
Disqualification

PROCEDURAL HISTORY: On April 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 125659). Claimant filed a timely request for hearing. On May 11, 2015, ALJ Shoemake conducted a hearing, and on May 15, 2015 issued Hearing Decision 15-UI-38578, concluding claimant had good cause for quitting work. On May 19, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Motel 6 – McMinnville employed claimant as a night auditor from October 15, 2012 to March 7, 2015.

(2) In December 2013, claimant and a coworker observed the manager soliciting female guests for sex, bartering lodging for goods or sex, and embezzling from the employer to pay off female guests who were offended by his behavior. In late January or early February 2014, claimant and the coworker notified the owner about the manager's behavior, but the owner did not appear to take any action on their complaint. Approximately six weeks after the complaint, the owner discharged the manager. When claimant and the coworker asked the owner why he had not taken action sooner, the owner told them that he had thought the situation would change.

(3) The owner hired a new manager who had previously worked for the business. Over approximately one and one-half years, the new manager made sexual comments about female employees, said he had attempted to have sex with his dog but the dog wouldn't "give it up," and said a maintenance man's limp was due to the manager having "sex with him too hard." *See* Audio recording at ~14:00.

(4) Claimant did not want to hear the new manager's comments. He felt frustrated. He thought it had taken too long for the owner to respond to his complaints about the first manager, and did not feel it would do any good to complain about the second manager. He thought the owner would get upset, and did not want to continue to work with the new manager if the new manager knew he had complained.

Claimant briefly told the manager he did not like the comments, but the manager did not appear to take claimant's remarks seriously and did not stop making comments.

(5) On March 7, 2015, the manager did not make any comments. The last incident had occurred approximately two weeks earlier. That day, however, claimant told the manager that he quit. Claimant did not tell the manager why he was quitting, and did not complain to the owner about the manager prior to quitting. Claimant and his coworker planned to talk to an attorney about things, and did not want to say too much about it.

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

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) (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.

In Hearing Decision 15-UI-38578, the ALJ concluded that claimant quit work with good cause, reasoning, "I do not find that taking his concern about the second manager to the owner was a reasonable alternative for claimant because the owner did not believe him previously when he told the owner that the first manager was embezzling money from the employer. Given that, it's not likely that the owner would have taken any steps to resolve the concern." Hearing Decision 15-UI-38578 at 2. However, the record does not show that the owner did not believe claimant's first complaint. Although claimant stated during the hearing that he felt the owner did not believe the complaint, claimant also indicated that he had subsequently learned that the owner's delay in responding to the complaint was not based on his disbelief that claimant's complaints were founded, but rather because he felt the problems with that manager would resolve themselves. Additionally, claimant testified that the owner discharged the manager six weeks after claimant's initial complaint, showing that the owner's behavior with respect to the first manager did not form a reasonable basis upon which claimant would believe it unlikely that the owner would respond, had claimant complained about the second manager.

At the time claimant quit work, he had not reported the new manager's behavior to the owner. Although he told the new manager he did not like the new manager's comments, claimant understood that the new manager thought claimant was joking, and did not understand that claimant felt offended by the new manager's comments, much less understand that claimant felt so offended by them that he was considering quitting work if the manager did not stop making them. Claimant did not give the employer a reasonable opportunity to address or resolve his complaints prior to quitting work. Given that claimant had complained to the owner before, and that complaint resulted in the previous manager's discharge within six weeks, this record does not show that complaining to the owner would have been futile. Moreover, claimant did not show that the timing of his quit was prompted by a grave situation. Claimant indicated that he had reached the limits of his ability to tolerate the new manager's behavior on

March 7th, but admitted that the new manager had not made any offensive comments for a couple of weeks before that date, and did not identify anything else that occurred in the workplace on or around March 7, 2015 that constituted a situation of such gravity that no reasonable and prudent person would have continued to work for the employer for an additional period.

On this record, claimant failed to prove that he quit work with good cause. We must therefore conclude that claimant voluntarily left work without good cause, and he is disqualified from receiving unemployment insurance benefits because of this work separation until requalified for benefits.

DECISION: Hearing Decision 15-UI-38578 is set aside, as outlined above.

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

DATE of Service: July 6, 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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