

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0618

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #90214). Claimant filed a timely request for hearing. On May 11, 2015, ALJ Frank conducted a hearing, and on May 19, 2015, issued Hearing Decision 15-UI-38714, affirming the administrative decision. On May 26, 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). In addition, claimant included new information in her argument and did not explain why circumstances beyond her reasonable control prevented her from presenting the information at the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing in reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Goodwill Industries of the Columbia Willamette employed claimant as an employment specialist from January 6, 2010 to March 19, 2015.

(2) On March 4, 2015, claimant's supervisor and the employer's intervention specialist met with claimant to discuss claimant's job performance, which they believed was deficient due to a lack of training. Claimant's supervisor directed claimant to report to the facility where the supervisor worked for training on March 11, 2015.

(3) On March 11, 2015, claimant reported to the facility where her supervisor worked. As the supervisor began to conduct the training she had planned, she became concerned about the negative, critical, and disparaging remarks claimant made about her job and the employer. When the time came for claimant's lunch break, the supervisor told claimant to leave the facility for her break, decide whether she wanted to continue working for the employer, and let the supervisor know her decision

when she returned. The supervisor then contacted the intervention specialist and told him about the problems she was having training claimant. The intervention specialist told the supervisor that if claimant continued to display a negative attitude, the supervisor should suspend her. After claimant returned from her break, the supervisor concluded that claimant's behavior had not improved. She met privately with claimant and told claimant that she had been instructed to suspend claimant without pay. The supervisor did not tell claimant the reasons for or the planned length of the suspension, and claimant did not ask. Claimant then left the workplace.

(4) Approximately one week after she was suspended, claimant sent her supervisor a text message in which she asked how long she would be suspended. The supervisor did not respond to claimant.

(5) On March 18, 2015, claimant contacted the employer's deputy director and told him that she did not know what to do, that she was upset because she had not been told how long she would be suspended, that she gave up, and that she had "surrendered." Audio at 11:38. The deputy director said that he would meet her at his office to give claimant her final check. Also on March 18, 2015, the claimant sent an email to one of the employer's managers asking about matters such as her final paycheck, continuing medical insurance coverage and her retirement account. Audio at 22:40.

(6) The deputy director notified the intervention specialist that claimant had resigned, and on March 19, 2015, the employer processed claimant's work separation as a voluntary leaving.

CONCLUSION AND REASONS: We agree with the ALJ that claimant voluntary left work without good cause.

We begin our analysis by determining the nature of claimant's work separation. 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," not necessarily whether the employee is scheduled for any shifts. OAR 471-030-0038(1)(a).

While on suspension from work on March 18, 2015, claimant told the employer's deputy director that because she was frustrated and upset about her suspension from work, she had given up and had "surrendered." When the deputy director offered to meet claimant to deliver her final paycheck to her, claimant did not tell the deputy director that he had misunderstood the meaning of her statement, had not quit her job, or ask if the deputy director had discharged her. Claimant's statements, and failure to object or question the deputy director when he mentioned giving her a final check, objectively indicate that claimant was unwilling to continue working for the employer, and we therefore conclude that claimant's work separation was a voluntary leaving.

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). 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 her job because she was upset about her unpaid suspension from work. The manner in which the employer imposed the suspension on claimant *i.e.*, by refusing to clearly tell her the reasons for and the length of the suspension arguably created a grave situation for claimant. The situation became even more stressful and frustrating for claimant when, after claimant had been suspended without pay for about a week with no contact from the employer, claimant's supervisor did not respond to claimant's question about the length of the suspension. Claimant had alternatives to quitting her job when she did, however. Claimant could have contacted the employer's intervention specialist and questioned him about the reasons for and the length of her suspension, and her prospects for returning to work. When she spoke with the deputy director on March 18, 2015, claimant could have asked him to help her obtain information about her suspension and employment status. Instead of asking the deputy director for assistance, claimant quit her job. A reasonable and prudent person, exercising ordinary common sense, would have sought answers to these questions before deciding to leave work.

Claimant failed to demonstrate good cause for quitting her job and is disqualified from the receipt of benefits based on this work separation.

DECISION: Hearing Decision 15-UI-38714 is affirmed.

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

DATE of Service: July 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 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.