

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0639

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 111542). Claimant filed a timely request for hearing. On May 19, 2015, ALJ Vincent conducted a hearing, and on May 22, 2015 issued Hearing Decision 15-UI-38971, affirming the Department's decision. On June 1, 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). Therefore, we did not consider the argument when reaching this decision. We considered the entire hearing record.

FINDINGS OF FACT: (1) Holiday Inn Express Ontario employed claimant from June 16, 2014 to March 10, 2015 as a head housekeeper.

(2) One of claimant's duties was to check the guest rooms after the housekeepers cleaned them to ensure the housekeepers cleaned the guest rooms properly. On March 9, 2015, claimant inspected some of the guest rooms before she left work. Claimant assigned the duty to check the remaining rooms to her assistant because the employer permitted claimant to leave work early that day for a doctor's appointment. The general manager inspected 40 rooms after claimant and her assistant checked them, and found cleanliness problems in 28 of the rooms she inspected.

(3) On March 10, 2015, the general manager asked claimant if she checked the guest rooms on March 9, 2015. Claimant told the manager she and her assistant checked the rooms. The manager told claimant, "I don't like to be lied to." Audio Record at 16:44 to 16:54. The manager gave claimant a list of cleanliness problems she found in the guest rooms, asked claimant how she planned to correct the problems, and suggested claimant needed additional training. Claimant considered the manner in which the manager discussed the guest room issues with her to be rude, and told the manager she could clean the rooms herself.

(4) On March 10, 2015, claimant quit work because she considered the general manager to have been rude to her.

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

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 testified that she quit work because the general manager was rude and unfair toward her for several days. Audio Record at 6:21 to 6:53. A manager’s behavior toward an employee may be good cause to leave work if a claimant shows she was subjected to ongoing “oppression” or “abuse” in the workplace. See *McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits); *Beth A. Jackson* (Employment Appeals Board, 13-AB-0502, April 2, 2013) (ongoing unwanted sexual advances and touching despite making complaints); *Brenda A. Kordes* (Employment Appeals Board, 12-AB-3213, January 8, 2013) (ongoing sexual harassment); *Stephen G. Wilkes* (Employment Appeals Board, 12-AB-3173, December 14, 2012) (ongoing verbal abuse despite complaints); *James D. Hayes* (Employment Appeals Board, 11-AB-3647, February 9, 2012) (sexist and ageist remarks); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor’s ongoing verbal abuse and fits of temper); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management’s ongoing ageist comments and attitudes); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (supervisor’s regular fits of temper and verbal abuse). Although claimant characterized the general manager’s behavior toward her as “rude” and “unfair” for several days, claimant provided evidence of only one incident, on March 10, 2015. During that incident, the only statement made by the general manager that could be considered rude or unfair was the statement implying that claimant was lying. The record does not show that the general manager yelled, used foul language, threatened claimant, or otherwise engaged in offensive conduct that was so frequent or severe as to rise to the level of being “abusive” or “oppressive” as established by the cases applying the *McPherson* standard.

In sum, because claimant failed to meet her burden to show that the general manager’s conduct created a situation of such gravity that claimant had no reasonable alternative but to quit, claimant did not have good cause to quit. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-38971 is affirmed.
Susan Rossiter and D. P. Hettle, *pro tempore*;
J. S. Cromwell, not participating.

DATE of Service: July 22, 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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