

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0644

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #74932). Claimant filed a timely request for hearing. On May 18, 2015, ALJ Murdock conducted a hearing, and on May 22, 2015, issued Hearing Decision 15-UI-38959, affirming the administrative decision. On May 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was relevant and based on the record.

FINDINGS OF FACT: (1) Motel 6 - McMinnville employed claimant as a manager on duty from December 26, 2013 until March 7, 2015.

(2) Claimant and his coworkers were offended by the behavior of the general manager to whom he reported when he began working for the employer. The general manager made comments of a sexual nature to women, inappropriately touched women, made advances on claimant's wife, and on one occasion, trapped a guest in a room and inappropriately touched the guest. Audio at 10:00. Claimant and other employees repeatedly complained to the employer's owner about the general manager's conduct, but the general manager's inappropriate behavior continued.

(3) Sometime during January or February 2014, a guest complained to claimant that another employee had exposed himself to her. Claimant told the general manager about the complaint, but the general manager told claimant to say nothing, "because we could get in trouble for this." Audio at 11:00. After claimant complained to the owner about the employee's behavior, the owner discharged the employee. Audio at 15:04.

(4) In March 2014, the employer talked with claimant and his coworkers and told them that he was giving the general manager "one more chance." Audio at 12:00. Problems with the general manager continued, however, and at the end of April 2014, the employer discharged the general manager.

(5) In May 2014, the employer hired a new general manager. The general manager regularly became angry with employees, and would “go into rages against people.” Audio at 15:57. Claimant told the general manager that his behavior upset employees, and cautioned the general manager that he should control his temper; the general manager did not do so, however.

(6) Also in May 2014, claimant learned that the general manager was considering hiring a convicted murderer who had recently been released from prison after serving his sentence. Claimant argued with the general manager about hiring this individual; the general manager became angry and told claimant that he was fired. Claimant called the owner about this situation, but the owner never returned his call. The general manager rescinded his decision to discharge claimant, and claimant returned to work. The general manager did not hire the ex-convict.

(7) Claimant and his coworkers were offended by the general manager’s conduct. The general manager regularly touched himself inappropriately, made lewd comments about his dogs, called one employee “a sexy little bitch,” and talked about having sex with her. Audio at 19:19 to 20:31. Claimant repeatedly complained to the owner about the general manager’s behavior; the owner did not respond to claimant’s calls, and the general manager’s offensive behavior continued.

(8) Sometime during claimant’s last several months of work for the employer, a probation officer with whom claimant was acquainted visited the motel where claimant worked and asked to speak to one of claimant’s coworkers. Claimant knew that the probation officer handled a caseload that included sex offenders, and asked the probation officer if the coworker was a sex offender. The probation officer responded that the coworker was a sex offender. Audio at 21:18. Claimant talked with the general manager about the employee’s criminal record; the general manager talked to the owner and then told claimant that the owner had told him “we’ll let it slide.” Audio at 21:31. Other employees complained about the employee who was an alleged sex offender because they often encountered the employee standing naked in a back room, where supplies needed by employees were stored, preparing to shower in the employee bathroom. Claimant complained to the general manager about this behavior; although the general manager told claimant he would speak to the employee, the behavior continued. Audio at 22:26.

(9) Claimant believed that the employer owed him a bonus. He asked the general manager to talk to the owner about the bonus and the general manager promised that he would. On May 7, 2015, claimant asked the general manager if he had discussed his bonus with the owner. The general manager became angry with claimant and told him he was not getting a bonus. Claimant then called the owner, who told claimant he should deal with the general manager. Claimant left work and returned home.

(10) Also on May 7, 2015, the owner called claimant at home and apologized for his failure to respond more appropriately to claimant’s earlier call. Claimant explained the problems he and his coworkers were experiencing. The owner told claimant that he would understand if claimant quit his job, but he appreciated the work claimant did and did not want claimant to leave. The owner also said that the situation claimant described made the owner “sick to his stomach” and that he would visit the motel in two or three days to attempt to resolve the problems claimant had described. Audio 24:04 to 25:11.

(11) Claimant never returned to work for the employer after May 7, 2015. He quit his job because he believed the owner would take no action to address his complaints about his work environment.

CONCLUSION AND REASONS: We agree with the Department and the ALJ that claimant quit 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.

Claimant quit his job because he concluded that the owner would take not address or resolve his complaints about the workplace. Based on this record, we find that claimant’s complaints about the work environment he and his coworkers experienced were justified, and that the situation claimant faced was grave. Claimant was offended by the behavior of the general manager, who was unable to control his temper, repeatedly made unwelcome comments of a sexual nature to employees, and tolerated inappropriate behavior by a coworker who allegedly was a convicted sex offender. Prior to the date on which claimant left work, the owner never responded to claimant’s repeated complaints about these matters. Claimant had, however, a reasonable alternative to quitting his job on May 7, 2015. On that date, the owner contacted claimant, acknowledged that the situation at claimant’s workplace was unacceptable, and told claimant he would visit the motel in two or three days to address the problems claimant had described. Claimant failed to show that no reasonable and prudent person would have remained on the job for at least a few more days to determine if the owner was sincere in his willingness and desire to resolve the problems claimant and his coworkers were experiencing. Absent such a showing, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

We therefore conclude that claimant voluntarily left work without good cause. Claimant is disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 15-UI-38959 is affirmed.

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

DATE of Service: July 17, 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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