

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0682

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130018). Claimant filed a timely request for hearing. On May 1, 2015, ALJ R. Davis conducted a hearing, and on May 21, 2015 issued Hearing Decision 15-UI-38854, affirming the Department's decision. On June 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she recited facts she had already presented at the hearing and offered new information that she did not present at the hearing. Claimant did not explain why she did introduce this information at the hearing or otherwise show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider the new information that claimant sought to present in her written argument. EAB considered only information received into the hearing record and the parts of claimant's argument that relied on facts in the hearing record when reaching this decision.

FINDINGS OF FACT: (1) Valdez City School employed claimant as a certified business teacher in its middle school and high school from January 6, 2015 until February 25, 2015. The employer operated public schools in Valdez, Alaska.

(2) Sometime before January 6, 2015, the employer offered claimant a teaching position and claimant accepted. Claimant signed a contract with the employer under which she was guaranteed teaching work from January 6, 2015 until the end of the regular school year, which was May 28, 2015. After the contract expired, there was a possibility that the employer would renew it for school year 2015-2016.

(3) Sometime before January 6, 2015, claimant moved to Valdez from out of state. Claimant rented a downstairs living space in the house of the school superintendent for the employer. The superintendent lived in the upstairs of the same house. Although the superintendent was married, his wife was not living in the house but was residing somewhere outside of Alaska.

(4) Sometime on or after January 6, 2015, claimant started work teaching in the employer's schools. Claimant also worked for the employer as an assistant volleyball coach for girls. Claimant received a stipend for her coaching work which was in addition to the pay she received for teaching.

(5) Beginning sometime in January 2015, the superintendent began inviting claimant to his upstairs living area in the house in which claimant occupied the downstairs. The superintendent invited claimant upstairs "several times" for dinners and drinks. Transcript at 18. By approximately the end of January 2015, claimant and the superintendent had entered into an intimate, sexual relationship.

(6) By February 2015, claimant was experiencing difficulties working with one or more of the other volleyball coaches. On approximately February 15, 2015, claimant was removed from her position as an assistant volleyball coach. Transcript at 15. Although claimant was not going to work out the remainder of the school year as coach, the employer did not require her to forfeit any portion of the stipend she had received for assuming that position. Under usual circumstances, the employer would have required an employee who was removed from a position mid-year to lose a part of his or her stipend.

(7) On February 25, 2015, the superintendent invited claimant upstairs to his living area in the house. He presented to claimant two letters he had prepared over her signature to give to the employer, and told claimant that she could not continue working for the employer and to sign the letters, which he intended claimant to deliver to the employer on separate, future dates. One letter, which the superintendent had dated February 26, 2015, stated that claimant was "resigning for personal reasons" that were "beyond [her] control," effective February 27, 2015, and the letter apologized for its "short notice." Transcript at 6, 15. The letter also stated that upon her resignation claimant was "leaving Valdez and leaving Alaska." Transcript at 16. The second letter, which the superintendent had dated February 27, 2015, again stated claimant's intention to resign and went on the state "it's my understanding that the resignation [] comes with support from the administration to release me from my contract under good terms. My resignation also comes with the understanding that I do not hold the [school] District liable for my early resignation." Transcript at 6. Claimant had not asked the superintendent to prepare any letters and had not been informed in advance that the superintendent wanted her to leave work. Claimant signed both letters in the superintendent's presence and did not change either one. Transcript at 14. Claimant signed the letters because she thought, by preparing the unsolicited letters and the language in those letters, the superintendent was expressing that he wanted claimant to quit work and he wanted claimant to stop residing in his house. Transcript at 22, 23.

(8) On February 26, 2015, claimant met with the superintendent and the employer's director of business services. Both told her that the employer would pay her expenses if she moved out of state. Transcript at 16, 31. After the meeting, claimant gave the employer the resignation letters that the superintendent had prepared and she had signed. The employer gave claimant \$5,000 to cover her moving expenses. Transcript at 24.

(9) On February 27, 2015, claimant left work. On March 5, 2015, claimant moved away from Alaska.

(10) At all times, the employer considered that claimant “did a great job with the kids” and that she “did a fine job.” Transcript at 11, 13. Despite claimant’s apparently adequate job performance, it was unlikely that the employer was going to renew her teaching contract after the end of the current school year in May 2015 if she had continued working.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

The Hearing Decision. In Hearing Decision 15-UI-38885, the ALJ concluded that claimant’s work separation was a voluntary leaving and claimant did not show good cause for it. As to the nature of the work separation, the ALJ reasoned that, although the superintendent had prepared unsolicited letters for claimant to sign in which she announced her resignation in two days, he was “persuaded that continuing work was available and claimant chose not to continue working for the employer,” which meets the regulatory definition for a voluntary leaving rather than a discharge. Hearing Decision 15-UI-38885 at 2. As to claimant’s failure to show good cause for leaving work, the ALJ reasoned that, because claimant voluntarily entered into a sexual relationship with the superintendent, any difficulties she experienced due to the superintendent’s termination of the relationship and his desire that she move from his home, could not qualify as “grave” reasons for her decision to quit under OAR 471-030-0038(6) (August 3, 2011). Hearing Decision 15-UI-38885 at 3. Alternatively, the ALJ reasoned that claimant did not show good cause for leaving work because she had reasonable alternatives under the circumstances such as moving from the superintendent’s residence and continuing to work for the employer until the end of her work contract. Hearing Decision 15-UI-38885 at 3. We agree with the ALJ’s characterization of the work separation but disagree with his conclusion that claimant did not have good cause to leave work.

The Work Separation: Throughout the hearing and in her written argument, claimant contended that she was discharged, based principally on the facts that the school principal had told claimant that her work contract was not going to be renewed for school year 2015-2016, the superintendent had prepared unsolicited letters over her signature which set an almost immediate date for her resignation, and the superintendent had told her she could not continue to teach for the employer when he gave her the letters. Transcript at 20, 21, 22, 23, 27, 28, 29, 30; Claimant’s Written Argument at 2-3. In contrast, the employer’s witnesses, including the superintendent, testified it was their understanding that claimant had voluntarily quit work. Transcript at 4, 6, 8, 11. The Department’s regulation about properly characterizing a work separation states that, if at the time the work relationship terminated, claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). However, if claimant was willing to continue to work for employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

The employer’s witnesses testified that, although it was not likely claimant’s work contract was going to be renewed after the current school year ended on May 28, 2015, the employer was willing to allow claimant to continue to work through that date. Transcript at 7, 11. While claimant described various personal circumstances that induced her to sign the resignation letters and to leave work, she conceded that she did not know what would have happened if she had not signed those letters, and that the only things she knew “for sure” was that her work contract was not going to be renewed for the next school

year. Transcript at 28. Since claimant did not dispute that she likely could have continued to work for the employer even after her personal relationship with the superintendent had ended, and did not contend that the employer, or even the superintendent, had expressed an unwillingness to allow her to continue to work out her then-current employment contract if she moved out of the superintendent's house, claimant agreed that the circumstances as they existed when she resigned met the regulatory definition for a voluntary leaving rather than a discharge. While claimant may have felt pressured into agreeing to resign, those pressure are properly evaluated to determine whether claimant left work for good cause, and do not transform her resignation from a voluntary leaving into a discharge.

Disqualification or No Disqualification. 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 her employer for an additional period of time. Where the gravity of the situation experienced by a claimant resulted from his or her deliberate actions, the actions of claimant in creating the grave situation must be examined in accordance with the actions of a reasonable and prudent person exercising ordinary common sense. OAR 471-030-0038(5)(f).

It was difficult to sort out the circumstances that led to claimant's resignation. Although the superintendent denied have a sexual relationship with claimant, he conceded that he invited claimant up to his living area for drinks and dinner on several occasions and that he prepared and gave to claimant the resignation letters, which she signed without making any changes. Transcript at 12, 17. However, the superintendent was unable to provide any logical reason for why he prepared those letters, or why claimant might have suddenly wanted to resign from work, other than his "speculation" that Valdez was a dark place in the winter and claimant might have had difficulty adjusting to that darkness. Transcript at 17. A person who prepared resignation letters on behalf of another would logically be expected to know why that person wanted to resign and why he was preparing those letters. In light of the fact that claimant did not ask the superintendent to prepare resignation letters for her, and the letters set out a rushed resignation date and provided unnecessary information about claimant's intention to leave Alaska, it can only be inferred that, for some reason, it was the superintendent who desired claimant's prompt departure from state. Combined with the employer's unusual decision to allow claimant to keep the entire stipend for the volleyball position from which she was removed and pay \$5,000 toward claimant's expenses to relocate from Alaska after quitting her job, it can only be inferred that the employer, or someone who had some influence with the employer, wanted to induce claimant to quit work and to leave Alaska. Transcript at 15, 16, 24, 31. Moreover, the language the superintendent placed in one of the resignation letters, stating inexplicably that claimant would not hold the employer liable for her early resignation, suggests that he was concerned about something related to claimant, her employment or her leaving, and wanted to avoid it. Transcript at 6. Taking the sum of these undisputed facts, they are most reasonably explained by claimant's account that she and the superintendent had a sexual relationship, that he decided to abruptly terminate it on February 25, 2015, and that he wanted to create incentives for claimant to immediately leave the state and to deter her from taking any legal action against him or the employer due to the inappropriate nature of his relationship with her.

Transcript at 22, 24, 27. Not having a plausible alternate explanation from the employer's witnesses, we accept claimant's testimony about the circumstances that led to her resignation.

While claimant agreed to enter into a sexual relationship with the superintendent, the ALJ was incorrect in concluding that claimant should reasonably have foreseen that when it ended the superintendent would take steps both to pressure her into resigning from her teaching job and to eject her from her residence in the middle of the school year. Such a sequence of events may appear foreseeable in hindsight, but a reasonable and prudent person, exercising ordinary common sense, would not have perceived a risk of them at the outset of or during the relationship. OAR 471-030-0038(5) (f) does not bar claimant from showing good cause for her decision to quit work under the circumstances.

After it was apparent that the superintendent wanted claimant to quit work and to live elsewhere than in Alaska, claimant's work situation was realistically untenable. The employer's witnesses agreed that it was highly unlikely that claimant's work contract was going to be renewed, and in only three months she would be out of work in a state far away from her usual home state. Transcript at 7, 28. The superintendent had expressed by the resignation letters that he prepared and to claimant when he spoke with her on February 25, 2015, that he wanted her out of the workplace, out of his house and out of the state immediately. Transcript at 6, 16, 22. Coming from an individual with presumably high supervisory authority over claimant's continued ability to work for the employer, it can be inferred that his statements were a compelling incentive for claimant to conclude that she had no future working for the employer after the current school year ended, and if she stayed at work for the three remaining months under her teaching contract she would need to move immediately from the superintendent's home and incur significant additional expenses. As well, the employer had agreed to pay claimant \$5,000, stated to be for moving expenses, if she left Alaska mid-contract and, presumably, those funds would not be provided if she worked out the term of her contract. Transcript at 16, 24, 31. These funds were reasonably a compelling inducement for claimant to quit work immediately. On facts similar to these, including only a relatively short tenure of continued work combined with significant financial inducement to quit work before the end of that tenure, EAB has held that a claimant showed good cause for leaving work. *See Karen J. Russell* (Employment Appeals Board, 2014-EAB-0941, July 22, 2014) (claimant had good cause to leave work when she had only four to six weeks remaining to work and the employer offered her a \$6,000 severance agreement to leave work immediately); *Christina J. Wilcox* (Employment Appeals Board, 2014-EAB-0609, May 14, 2014) (claimant had good cause to resign when the employer offered her a \$7,000 financial settlement if she quit and she likely had only a *de minimus* amount of continued employment if she did not leave); *Kevin B. Gough* (Employment Appeals Board, 2013-EAB-0206, February 25, 2013) (claimant had good cause to leave work when employer agreed to provide a significant financial incentive if he left immediately when it was unlikely that he had more than the prospect of a *de minimus* time of continued employment).

Given the short period of continued employment available to claimant under her teaching contract and the extreme unlikelihood that she could salvage the employment relationship in light of the superintendent's expressed wishes that she leave work, no reasonable and prudent person would have declined the substantial financial incentives that the employer offered her if she left the state immediately or would have opted to remain employed.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-38854 is set aside, as outlined above.

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

DATE of Service: August 11, 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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