

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0775

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 83231). The employer filed a timely request for hearing. On May 29, 2015, ALJ Vincent conducted a hearing, and on June 17, 2015, ALJ Holmes-Swanson issued Hearing Decision 15-UI-40218, concluding claimant voluntarily left work without good cause. On June 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Youth Progress Association employed claimant as a case manager from June 23, 2014 to March 12, 2015.

(2) The employer notified claimant of concerns with aspects of her work performance, and, over a period of several months, claimant tried to improve. Claimant felt frustrated because, while the employer instructed her to improve her attitude or other aspects of her performance, no one explained to claimant what it was about her attitude or performance that needed to change, or provided her with specific examples or comparisons between, for example, the attitude she displayed and the attitude the employer wanted her to display.

(3) Claimant requested help from the executive director, but he said he was too busy to assist her. She requested help from the director of operations, but he lacked the expertise necessary to help claimant, and the executive director told claimant he could not assist her. Claimant had some difficulties with her supervisor in the past and wanted to approach someone else for assistance, but she was told that she was to go to the supervisor if she needed help.

(4) On March 11, 2015, the executive director met with claimant about her work performance. During the meeting, he told claimant that her approach to the work was different from the employer's philosophy and named examples of other organizations where he thought she might be a better fit.

Claimant asked if she was being discharged, and the executive director said she was not. The executive director told claimant he would make time to meet with her to help her improve her work performance. Claimant felt hopeful that things would change after that conversation. After the meeting, claimant continued working and attended a class, but felt upset because of her conversation with the executive director and, instead of returning to work after her class, she called in sick for the rest of her shift.

(5) On March 12, 2015, the employer issued claimant a "decision making leave" letter. Transcript at 14. The letter stated that the employer "is placing you on a one-day decision making leave," set forth some work performance expectations to which claimant was to agree to try to meet, and instructed claimant that she "must take the remainder of the day off to decide whether you can make these changes. Otherwise, your employment with Youth Progress will terminated [sic] effective March 15." Transcript at 18.

(6) Claimant felt that she had already made the changes listed in the decision making leave letter, and did not know what else to do. She felt that the employer was setting up documentation to justify discharging her, and that even if she took the decision making leave day she would not be able to succeed in her job. Claimant refused to take the decision making leave day and asked the employer to terminate her instead. Claimant did not return to work after March 12, 2015.

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

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).

In her written argument, claimant argued that she did not quit work, but that, because she was not going to be able to make the changes the employer wanted her to make, the employer discharged her under the terms of the decision making leave letter. However, at the time the employer presented her with the decision making leave letter on March 12, 2015, the employer had at least one more day of work available to her, the decision making leave day, and, subject to claimant's agreement, had an indefinite amount of work available for her after that, if she was willing to agree to try to meet the expectations set forth in the letter. Claimant chose to terminate her employment instead of continuing the employment relationship. Because claimant could have continued to work for the employer for some additional period of time, claimant voluntarily left work.

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.

Claimant quit work because she did not think she would be able to meet the employer's expectations, as set forth in the decision making leave letter. Claimant felt that she had already tried to make the requested changes, did not understand what else the employer wanted her to do, and was concerned that the employer would not provide her with the support she needed to change as requested. However, the day before claimant quit work, the employer's executive director had offered to provide her with additional help with her performance issues, and claimant testified that she felt "a little hopeful" that she could improve her performance because of his offer. Transcript at 34. Given that new offer of help, we cannot conclude that a reasonable and prudent person of normal sensitivity would feel she had no reasonable alternative but to quit work when offered continued employment and assistance to improve her performance.

Claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-40218 is affirmed.

J. S. Cromwell and D. P. Hettle, *pro tempore*;
Susan Rossiter, 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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