

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0815

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135906). Claimant filed a timely request for hearing. On June 29, 2015 ALJ Seideman conducted a hearing, and on July 10, 2015 issued Hearing Decision 15-UI-41364, affirming the Department's decision. On July 30, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Mercedes Benz of Medford employed claimant as a receptionist from July 1, 2014, when the employer changed owners, until April 21, 2015. Before the change in ownership, claimant also worked as a receptionist for the employer from March 1, 2013 until June 30, 2014.

(2) Sometime before July 1, 2014, claimant came to perceive that she was being bullied by the employer's controller. Exhibit 2 at 2. Claimant complained to the then general manager about the manner in which the controller treated her. The general manager instructed the controller not to speak to claimant anymore unless she needed to make a request of claimant and, if she did, to speak to claimant "nicely." Exhibit 1 at 3. By the time dealership changed ownership on July 1, 2014, claimant and the controller routinely did not speak to each other in the workplace, and their only contact was on the few occasions when the controller had a specific work-related request for claimant. Audio at ~19:34. Their relationship continued this way throughout the remainder of claimant's employment.

(3) From the time claimant was first hired and throughout her employment, she did not take rest breaks at work. Sometime before the dealership changed ownership on July 1, 2014, claimant complained to the controller that her work duties did not permit her to take the breaks that the employer was required by law to provide to her. The controller told claimant that there was no one to provide coverage for her if she took a break. Audio at ~18:33.

(4) After the dealership changed ownership on July 1, 2014, the new owner was at the workplace every day. The prior general manager was replaced, but the controller remained with the dealership. The new owner's office was very near claimant's reception desk and they often encountered each other in the workplace. Claimant and the new owner had a very good working relationship and both liked each other. On many occasions, the new owner told claimant what a good job she was doing, and sometime after he assumed control, he increased claimant's pay. Audio at ~27:14, ~28:20, ~28:37. Claimant never complained to the new owner that she was not able to take rest breaks during work. Audio at ~29:32, ~30:00. Claimant never complained to the new owner about the controller or told him that she was uncomfortable working with the controller. Audio at ~30:29.

(5) On approximately March 27, 2015, claimant became upset at the way certain salespeople were assigning themselves to customers who came to the dealership for potential automobile purchases. One of claimant's responsibilities was to keep a chart of salespeople in the order that they arrived at work, to move the name of the salesperson at the top of the list to the end of the list after he or she waited on a customer and to move the name of the next person on the list to the top to indicate that the next customer to arrive was to be his or hers. On this day, a salesperson who had reached the top of the list needed to leave the sales floor for a short period of time and he told another salesperson, who was not the next one on the list, that she could take the next customer who came in to the dealership in his place and when he returned he would resume his place at the top of the list. After that salesperson left, a customer came in and purchased a vehicle from the salesperson whom the first salesperson had decided could take his place on the list, effectively denying the sale to the salesperson who had been next on the list. Claimant was indignant that a salesperson had made a vehicle sale by waiting on a customer out of the order designated on the chart. Claimant thought that this result was not "fair" and that the salespeople were undercutting the purpose of the chart that she kept. Audio at ~22:18. Claimant thought that the salespeople were "out of control." Audio at ~23:10. Claimant did not complain to the owner about what had happened or her outrage over it.

(6) On March 27, 2015, claimant gave a resignation letter to the employer's owner. Claimant cited "health and mental reasons" for quitting. Exhibit 4 at 1. Although claimant stated in the letter that she wanted the owner to "make sure the new [receptionist] gets a mid-morning and mid-afternoon break," she did not state either that she had not been getting breaks or that it was a reason for her decision to leave work. Exhibit 4 at 1. Claimant also stated in the resignation letter that "I doubt I will find a better boss!" and "I truly wish you all the luck in the world-although you don't need it!" Exhibit 4 at 1.

(7) On April 21, 2015, after training her replacement, claimant voluntarily left work.

CONCLUSIONS AND REASONS: 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 contended one reason that motivated her to leave work was stress that she experienced in the workplace. Audio at ~10:52. Claimant did not describe the effects of this stress in a way that suggested it was any more than the typical pressures an employee encounters in a fast-paced sales environment dealing with diverse personalities. Nothing claimant stated at hearing indicated that she was particularly susceptible to this stress or that it interfered in a serious way with her personal activities, her emotional state or her ability to perform in the workplace. Claimant did not meet her burden to show that the stress she sustained was a grave reason for her to leave work.

Claimant also testified that she left work because of the manner in which the controller had treated her in the past, apparently before the dealership changed ownership. Claimant stated that for some time lengthy period of time before she decided to leave work, she and the controller had, apparently by mutual choice, only minimal contact in the workplace. Claimant did not describe any encounters with the controller after the dealership changed hands that could be characterized as bullying or abusive. Claimant stated only that, as of the time she quit work, she had some trepidation if she needed to deal with the controller. Audio at ~20:04. Some feelings of discomfort, in light of the controller's alleged past (and now discontinued) unpleasantness to claimant, would be expected when claimant had one of her rare interactions with the controller. Nothing in claimant's account of her feelings suggested that they rose to the level or magnitude of a grave reason to leave work. Moreover, claimant would likely have had no reasonable basis to fear future unpleasantness from the controller given claimant's very good relationship with the new owner, his obvious respect for her work, and her frequent contact with him.

Claimant further testified that she left work because she had not been allowed to take rest breaks at any time during her employment. While any failure of an employer to follow legal requirements should be taken seriously, it does not appear that this was actually a reason for claimant's decision to leave work, but more in the nature of a listing of the employer's alleged wrongdoings to justify claimant's decision to leave work. Claimant did not dispute that for over the year and a half since the new owner assumed control over the dealership, she did not tell him that she thought that was not permitted to take lawfully required rest breaks due to her job duties. The owner credibly testified, and claimant did not dispute, that had he known of claimant's inability to take her breaks he would have acted to arrange for coverage from the salespeople, the accounting department or the service department to allow her to take them. Audio at ~29:32. On this record, claimant did not demonstrate that the employer was aware that claimant was being denied her breaks or reasonably should have been aware that it was not complying with legal requirements. Absent such evidence or evidence that claimant complained about her lack of breaks after the dealership changed ownership, claimant did not demonstrate that her failure to take breaks was a grave reason to leave work.

The final reasons that claimant left work also do not appear to have been grave. The salespeople's disregard of the sales rotation schedule on March 27, 2015 would, at most, have reasonably been an irritant to claimant but not a sufficiently grave reason to leave work. While claimant was likely upset about undercutting the fairness of the rotation, we can discern no adverse personal or professional impact to her from their behavior. As well, claimant's complaint that she felt she was not "kept in the loop" because she sometimes did not learn that the employer had changed some work practice

immediately, was also not a grave reason for her to leave work. Audio at ~17:13, ~24:18. It is not unknown for an employer not to communicate every change in policy to every single employee and most employees who are overlooked do not perceive this as was more than a temporary oversight. Absent additional evidence, claimant did not demonstrate that the employer's failure to be keep her "in the loop" on every change was a sufficient reason to give her good cause to leave work. Finally, even if the reasons that claimant cited for leaving work were arguably grave, a reasonable and prudent person of normal sensitivities exercising ordinary common sense, who had the relationship that claimant had with the owner, would not have concluded that she needed to leave work over any of her complaints before raising them with the owner and determining that he would not rectify them.

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

DECISION: Hearing Decision 15-UI-41364 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: September 8, 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.