

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0955

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141213). Claimant filed a timely request for hearing. On July 17, 2015, ALJ S. Lee conducted a hearing, and on July 23, 2015 issued Hearing Decision 15-UI-41909, affirming the Department's decision. On August 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Mentor Graphics Corporation employed claimant from March 10, 2004 until April 30, 2015, last as a quality assurance (QA) engineer in the employer's D2F caliber division. Claimant was 58 years old in 2015.

(2) In 2012, claimant was an acting lead of a group of workers. Claimant reported to the director responsible for the group that one of the workers was taking an excessive time away from work under the employer's flexible time off (FTO) program, was unavailable for work-related meetings and was "troublesome" to the group-. Transcript at 11. The director told claimant that she "[didn't] know how hard [the employee] was working" and did not take any action in response to claimant's report. Transcript at 12. A few months later, claimant reported the situation with the coworker to the employer's human resources department. A human resources representative told claimant that many of the employer's managers were not following the FTO program and the human resources department had decided to "leave it [violations of the FTO program] alone." Transcript at 13. Claimant thought that this attitude signified that the employer gave preferential treatment to some employees.

(3) In April 2013, the employer purchased a company in Bangalore, India that engaged in the photo mask and lithography businesses, which were claimant's areas of expertise for the employer. Later in 2013, after the purchase, claimant went to Bangalore to train the Bangalore team about quality assurance

activities. Claimant later observed that several of her peers working in quality assurance activities were transferred to other areas in the employer's business. Although the employer "assured" the employees in claimant's group that the team in Bangalore was only going to do "extra work" and was not going to replace employees in the United States, claimant became concerned about her job. In approximately October 2013, the employer transferred coating work from the United States to Bangalore, which claimant took as a sign that, regardless of the employer's assurances, most of her job tasks and duties were going to be transferred to someone in Bangalore. In fact, the employer did not intend to eliminate claimant's position in the United States. Transcript at 27, 38.

(4) Sometime in approximately late 2013, claimant also spoke to her director about the expected longevity of her job with the employer in light of the Bangalore purchase. The director told claimant that there was a "likelihood of a layoff" in the future." Transcript at 7. The director did not tell claimant definitively that her job was going to be eliminated, did not quantify the likelihood of her layoff or give claimant a specific date by which she would know if she was or was not going to be laid off. Transcript at 8, 22. Claimant perceived the director's statement as a "hint" that she was going to be laid off. Transcript at 22. Approximately around this time or before, claimant spoke with an employee whose work had been transferred to Ireland. The employee told claimant that he had not been notified in advance of his layoff and had not been offered a severance package. He also told claimant that the employer had eliminated its prior practice of giving severance benefits to workers who were laid off when their jobs were transferred out of the United States. In fact, although the employer did not give the employee advance notice of a layoff, it gave him a severance package. Transcript at 7, 38-39. The employer had not eliminated its policy of providing severance benefits to employees whose jobs were eliminated as a result of a business restructuring. Transcript at 38.

(5) Sometime around 2014, some employees forwarded to claimant an email in which a coworker referred to claimant as being "hysterical." Transcript at 14. At a meeting sometime later, this person made other remarks about claimant and the Bangalore team that claimant thought "made fun" of and "mocked" them. Transcript at 15. Both claimant and the Bangalore manager reported the coworker's comments to the employer but claimant did not observe that any actions were taken in response to the reports. Claimant thought that, because there were no repercussions to the coworker from his remarks, the employer was showing hostility toward her.

(6) By 2014, claimant thought that the employer did not sufficiently "encourage" women employees in leadership positions. Transcript at 16. However, the employer appointed its first female director in 2014. Claimant did not report her concerns about gender discrimination to the employer's human resources department because she thought it would be difficult to prove discriminatory intent and she thought she would face a "lot of negativity" from the human resources department. Transcript at 19.

(7) Sometime in approximately 2014 or 2015, claimant had an annual performance review. Claimant received a 1.5 percent increase in her compensation, rather than the 3 percent increase she had expected. Transcript at 14. Claimant did not receive the stock shares that she expected to receive. Transcript at 14. Around this time, the employer changed its organization structure so that claimant reported to a manager and not directly to a director. Claimant thought that the employer was retaliating against her by taking these actions. In fact, the employer's budgets were restricted during the upcoming year, and most employees at claimant's level received compensation that was equivalent to hers. Transcript at 32. The employer often changed its reporting structures and did not single claimant out when it changed the

person to whom she reported, and it did not demote claimant or reduce her compensation as a result of the change. Transcript at 14, 31-32.

(8) Sometime in approximately 2014 or 2015, the employer planned to restructure its world trade division, which was a sales division, and to transfer or eliminate approximately 400 positions in that division. Claimant was employed in a product division that was not affected by this restructuring and claimant's division was not going to be subject to any layoffs as a result of it. Transcript at 26-27. However, claimant heard "rumors" that there were going to be layoffs and she assumed she might be affected. Transcript at 9. In approximately 2015, claimant spoke with a person she assumed was a director and the supposed director mentioned to her that all managers had been given lists identifying which of the employees they supervised were slated for layoff and which were slated for early retirement in place of a layoff. The supposed director further mentioned to claimant that the managers were not allowed to inform employees if they were on one or both of these lists. Claimant took the comment as a "hint" to her that she was going to be laid off if she did not choose the early retirement option. Transcript at 9. No representative of the employer ever told claimant that she was going to be laid off if she did not accept early retirement. Transcript at 22.

(9) In 2015, the employer instituted a voluntary retirement program. On February 3, 2015, the employer sent an email to all employees who were 58 years of age or older and who had been employed for at least five years, stating that they had an option to retire early and setting out the incentives it was offering to them if they accepted early retirement. If claimant chose early retirement, her last day of work she would be April 30, 2015. For agreeing to retire, claimant would receive 15 months of salary, or \$137,505, a lump sum payment of her annual incentive target, or \$13,750, another lump sum payment of \$30,000 and all stock units that were scheduled to vest on or before September 30, 2015. Exhibit 2 at 4. The employer's handbook describing the early retirement program stated that the program was "completely voluntary." Exhibit 2 at 12. On February 20, 2015, claimant agreed to accept the offer of early retirement. Exhibit 2 at 7-9. Claimant did so because she was concerned that if she did not accept the offer of an early retirement, she might be laid off and would not receive any severance benefits.

(10) On April 30, 2015, 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 left work because she thought that if she did not accept the employer's early retirement offer, she would be laid off and would receive no severance benefits. Transcript at 6, 11, 45-46. Although claimant also cited several examples of what she perceived as hostile actions by the employer during her

employment, it was not clear that these alleged actions caused her to leave work. Nor was it clear that any of them created grave circumstances for claimant. Even if claimant contended that the employer did not “encourage” women enough, she did not contend that the employer treated her unfairly because she was a woman. Claimant also did not show that the employer’s failure to discipline the employee who was allegedly taking excessive amounts of FTO or its failure to take action against the coworker who allegedly disparaged her and the Bangalore team caused her any significant harms of an emotional, personal, professional or any other nature. Claimant also did not dispute that the employer had objective business reasons for not giving her the compensation she expected at her annual performance review, and did not dispute that the compensation she received was equivalent to that of other employees at her level who received comparable performance evaluations. While claimant might have been disappointed with her evaluation and her compensation, she did not show that it was significantly disparate from that of other employees, or that it could only be explained by the employer’s hostile or retaliatory motivations. On this record, none of these reasons were grave reasons leaving claimant not reasonable alternative but to leave work.

Claimant failed to prove by a preponderance of evidence that her belief she would be laid off with no severance benefits was objectively reasonable. No employer representative told claimant directly that she was going to be laid off, and her belief was based on what she perceived to be vague “hints” from a director who left work approximately one year earlier and a person whom she thought was one of the employer’s directors. Claimant provided no evidence to rebut the testimony of the employer’s human resources business partner that the employer was not going to transfer her position to Bangalore, and the employer’s restructuring and concomitant layoffs were limited to sales divisions and would not impact claimant’s position in a product division. The fact that the Bangalore team assumed the task of coating, which had previously been done in the United States, was at best an ambiguous indication of an intention by the employer to lay claimant off. The comments of one employee to claimant – that he was laid off due to the transfer of his job functions to Ireland and that he received no severance package – did not provide an objectively reasonable basis for claimant’s assumption that the employer had stopped giving severance benefits to employees who were laid off as a result of an operational restructuring. Moreover, the employer’s witness credibly testified that the employer continued to make severance benefits available to such employees, and claimant did not dispute the testimony that the employer had given severance benefits to the particular person whose job was outsourced to Ireland. Given the facts as they were known to claimant when she accepted the early retirement option, a reasonable and prudent employee who otherwise wanted to remain employed, would have clarified with the employer’s management or its human resources department whether she was going to be laid off if she did not enter into the early retirement agreement and, if she was laid off, whether she would receive severance benefits. Absent such clarification, a reasonable and prudent person would not have concluded that she needed to accept the offer of early retirement to avoid being laid off without any severance package. Because claimant did not take the actions of a reasonable and prudent person, she did not show good cause for leaving work when she did.

Claimant did not demonstrate that she had good cause to leave work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-41909 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: September 16, 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.