

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1035

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 24, 2015 the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 105336). The employer filed a timely request for hearing. On August 11, 2015, ALJ Murdock conducted a hearing, and on August 12, 2015 issued Hearing Decision 15-UI-42885, concluding claimant voluntarily left work without good cause. On August 28, 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) St. George's Episcopal Church in the Episcopal Diocese of Oregon employed claimant as a rector from February 7, 2011 until July 31, 2014.

(2) Claimant is an ordained priest in the Episcopal Church. As rector at St. George's, claimant was responsible for leading worship services, providing pastoral services and spiritual advice to the congregation, and participating in community activities. Claimant was also responsible for performing or overseeing various administrative duties at St. George's.

(3) In organizational structure, St George's operated under the auspices of the Episcopal Diocese of Oregon. St. George's local leadership was its vestry, whose members were elected by the congregation at an annual meeting, and the rector. If the members of the vestry and the rector could not agree on matters, neither had the authority to resolve the dispute without the cooperation or acquiescence of the other. Consensus between the vestry and the rector was essential to the operation of local Episcopal churches, including St. George's. Different from secular institutions, a rector could not be involuntarily

released from his or her service to an Episcopal church unless it was demonstrated that he or she had engaged in certain acts that were prohibited under the Canons of the Episcopal Church. Canons of the Episcopal Church, Title IV-Ecclesiastical Discipline.

(4) Claimant was St. George's first female rector. After claimant assumed the position of rector, she became aware that a faction of the congregation disliked her leadership, personal style, method of work and the direction she envisioned for St. George's. This faction was vocal its criticisms of and opposition to claimant. Claimant was unable to appease this faction, and their resistance to claimant's leadership became entrenched. Claimant concluded that the vestry, collectively, simply "did not like [her]" or the pastoral services she provided. Transcript at 18. Claimant perceived that there was nothing she could do to ease the stalemate between this faction and herself.

(5) In February 2014, four of the parishioners who opposed claimant were elected to positions as vestry members. The opposition to claimant intensified after the election. At the first meeting of the vestry after its new members were elected, an agenda item was a "mutual ministry review." Transcript at 24. The customary purpose of this agenda item was to evaluate the extent to which St. George's vestry and its rector had met a previously established goal of increasing congregation membership and to set a new goal for the next year. Instead of addressing this topic, the newly elected vestry members "immediately derailed" the meeting and began to unfavorably, and in detail, critique claimant's overall performance as rector since she was hired. Transcript at 24.

(6) By March 2014, claimant thought that something had to be done to improve her relationship with the faction on the vestry since St. George's congregation was "miserable" as a result of the ongoing, vocal criticisms of her and the resulting acrimony and opposition. Transcript at 20. While the faction had no grounds to involuntarily release her as rector, claimant perceived that it would not relent in its efforts to resist her, however disruptive those efforts had become to the well-being of the parish. In March 2014, claimant petitioned the Bishop of the Episcopal Diocese of Oregon, asking for the Bishop's help in quelling the dispute between herself and the vestry. The Bishop retained the services of independent consultant and mediator to work with claimant and the vestry to improve their relationship. After meeting with them, the mediator concluded that "the congregation had no love in it" and recommended the closure of St. George's Church. Transcript at 13. The mediator was unable to resolve or lessen the ongoing opposition to claimant, or its disruptive impacts on the congregation. The Bishop did not close St. George's.

(7) The situation continued to deteriorate after the vestry received the mediator's recommendation. At vestry meetings, the criticism of claimant continued and some of the vestry members started to "yell" at claimant when she tried to speak or explain herself. Transcript at 23. One of the vestry members, who was out of town at the time, sent out an email to other vestry members accusing claimant of being an "alcoholic." Transcript at 19. Other vestry members made very unflattering comments about claimant's character and her activities to residents of the local community and gossip began to spread about claimant in Roseburg, a small town. Claimant did not know how to deal with these personal comments or how to resolve the persistent hostility between herself and the vestry.

(8) After he received the recommendations from the mediator, the Bishop instructed claimant and the vestry members that they needed to come to some resolution of their difficulties on their own. Both parties communicated to the Bishop that they could not. Because the vestry did not have grounds to

discharge claimant under the Canons of the Episcopal Church, although they would have if they could, claimant communicated that she would resign if she were given an appropriate severance package. Claimant made the decision to leave work based on the continuing "battle" with the vestry, the persistent level of the acrimony, the failure of the mediation to resolve the problems, the ongoing damage to St. George's from the disputes and the offer of a severance package. Transcript at 17.

(9) On July 10, 2014, the Bishop wrote a letter to claimant and the vestry stating that due to their "inability to reconcile and repair the pastoral relationship," and based on their agreement, he was allowing the "dissolution" of claimant's "pastoral relationship" with St. George's effective July 31, 2014 if the parties signed and performed an enclosed agreement. Exhibit 1 at 1. The agreement stated, among other things, that St. George's would pay to claimant beginning on August 1, 2014 and continuing for ten months, her monthly stipend, her medical and dental insurance premiums and make the usual monthly contributions to claimant's retirement fund, in return for which claimant would leave work. Exhibit 1 at 1. The agreement further stated that, after it was fully performed claimant's status as rector at St George's "will be changed to a resignation." Exhibit 1 at 1. Claimant and the vestry members signed the agreement.

(10) On July 31, 2014, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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 his employer for an additional period of time.

In Hearing Decision 15-UI-42885, the ALJ concluded that claimant voluntarily left work without good cause. The ALJ reasoned that claimant demonstrated only that the ongoing dispute between herself and the vestry was "difficult or frustrating," rather than "grave." Hearing Decision 15-UI-42885 at 3. The ALJ further reasoned that claimant could have reasonably have stayed at St. George's because "the business of the church still continued and decisions were made, despite the difficulties in arriving at those decisions." Hearing Decision 15-UI-42885 at 3. We disagree.

The employer's witness at the hearing did not dispute claimant's description of how a local Episcopal parish operated, which was by the joint action of and the consensus between the rector and the vestry. The employer's witness also did not dispute that the vestry at St. George's vehemently opposed claimant and, if it could have, it would have discharged her. Nor did the witness dispute claimant's description of the ongoing, serious disruption to St. George's operations and its spiritual, pastoral and community work resulting from the serious acrimony between the vestry and claimant. From the bishop's July 10, 2015 letter to claimant and the vestry, it appears that the only way for the stalemate between claimant and the

vestry to be ended, after the failure of the mediation, was for claimant to have agreed to the dissolution of her pastoral relationship with St. George's. Exhibit 1 at 1.

While the employer's representative appeared to take the position at hearing that it was dispositive of claimant's claim that she resigned when the employer did not have the authority to discharge her, that circumstance does not establish that claimant did not have good cause to leave work or that she is necessarily disqualified from benefits. Transcript at 7, 25-27. It appears that, after the failure of the mediation to resolve the deep-seated issues between claimant and the vestry, claimant's ability to function as rector was severely compromised. In this respect, we note that the type of spiritual and pastoral services that claimant was hired to provide to St. George's are fundamentally different from the services of a manager in a secular business organization and are based on the rector having a perceived spiritual vocation to the priesthood. The crux of the relationship between the rector and the congregation appears to be one of trust and the shared commitment to achieve a common goal by an agreed upon means. Based on claimant's undisputed description of the ongoing difficulties, opposition and resistance that she faced, she and the vestry did not have such a consensus of views. Claimant's continued tenure as rector was untenable under these circumstances. Although the ALJ characterized these difficulties as not "grave," and cited that the church remained open and in operation despite these difficulties, that discounts the unique role undertaken by a church rector in a pastoral, spiritual relationship with a congregation. The salient issue is, not whether a particular church remained open and operating in the face of the described difficulties, but whether a reasonable and prudent rector, with a rector's vocation, spiritual and pastoral training and background, would reasonably have perceived the impasse claimant described with the vestry and its ongoing opposition to her to have been a grave situation. It appears to us that it was and that claimant exhausted the only reasonable alternative to leaving that was open to her when the mediation that she had requested failed.

In addition to the apparent gravity of the situation that claimant faced, the employer offered her a substantial severance package, including ten months of stipend and benefits, if she resigned when she did. Presumably the benefits from this severance package would not have been offered to claimant if she had stayed for the term of her pastoral commitment with St. George's. This severance package was a reasonably compelling inducement for claimant to agree to resign. On facts similar to these, EAB has previously held that a significant financial inducement to leave work immediately constituted good cause to leave work when combined with other circumstances militating in favor of leaving. *See* Employment Appeals Board, 2015-EAB-0682, August 11, 2015 (payment of \$5,000 moving expenses was good cause to resign from work immediately when claimant intended to return to another state after her work terminated); Employment Appeals Board, 2014-EAB-0941, July 22, 2014 (\$6,000 severance payment was good cause to leave work immediately under the circumstances); Employment Appeals Board, 2014-EAB-0609, May 14, 2014 (\$7,000 financial settlement was good cause for claimant to leave work immediately under the circumstances).

Given the persistent opposition to claimant's leadership, the unlikelihood that claimant could fulfill her spiritual and pastoral obligations to St. George's in the face of such opposition, and the inability of claimant to ameliorate the opposition through mediation, no reasonable and prudent rector would have declined the financial incentives that the employer offered her if she resigned and would have opted to remain as rector at St. George's.

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

DECISION: Hearing Decision 15-UI-42885 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 9, 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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