

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1068

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 150830). Claimant filed a timely request for hearing. On August 8, 2015, ALJ Logan conducted a hearing, and on August 28, 2015 issued Hearing Decision 15-UI-43674, affirming the Department's decision. On September 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument interspersed with new facts that she did not present during the hearing. Claimant did not explain the reason that she did not offer the new 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 (October 29, 2006). For this reason, EAB did not consider the new information that claimant sought to present in the written argument. EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Montrose Services, LLC employed claimant as a project coordinator from February 2, 2015, when it acquired Horizon Engineering, until June 8, 2015. Horizon Engineering employed claimant before the acquisition as a project coordinator from September 2004 until February 1, 2015.

(2) In approximately 2009, Horizon Engineering acquired a company known as AmTest. After this acquisition, one of Amtest's former employees began to work at Horizon as a project coordinator. When this employee started work at Horizon, one of Horizon's owners told claimant that she would advise this new coworker on a day-to-day basis about the tasks she should perform as a project coordinator.

(3) Before the employer acquired Horizon, claimant "pretty solidly" worked 30 to 35 hours per week. Transcript at 8. After the acquisition, claimant was working 40 hours per week "regularly" and sometimes up to 50 hours per week. Transcript at 8. Claimant attributed her increased work hours to

the employer's failure to effectively manage its schedule and to turn down work that exceeded the abilities of its employees to comfortably handle during the weekly working hours that Horizon had formerly required of its employees. Claimant also thought that the employer's increased workload for its project coordinators threatened to exhaust their ability to locate the resources needed for the field employees to perform the work that the employer had agreed to undertake. Claimant had two children in elementary school. She disliked that the increased hours she needed to work for the employer because it reduced the hours that she could spend with her children during the summer of 2015.

(4) Sometime before June 2015, claimant told the employer's vice-president, who had been one of Horizon's former owners, that she thought she was overworked after the employer acquired Horizon. In approximately mid-May 2015, the employer reassigned a field employee to work part of the time in the office as a project coordinator. Because this employee still performed some field work, claimant did not think that the employee's reassignment to perform some project coordinator work would alleviate what she perceived to be her burdensome work hours. Claimant believed that the only way to effectively control her hours as a project coordinator was for the employer to turn away some business and reduce its work commitments.

(5) On approximately May 25, 2015, claimant had an argument with the coworker who had formerly been an AmTest employee. The coworker reported to the argument to the employer's human resources representative, who also was a former owner of Horizon. On approximately May 26, 2015, the human resources representative met with claimant to discuss her argument with the coworker. When claimant brought up the coworker's poor performance as a project coordinator, the human resources representative mentioned to claimant that she was not communicating effectively with the coworker about the tasks that the coworker needed to perform. Transcript at 9, 23. The human resources representative told claimant that she and the other former owner of Horizon, the employer's current vice-president, had also observed that in the months since the employer had acquired Horizon that claimant had been "terse" in her office communications. Transcript at 9, 28. Claimant thought that the human resources representative's statements were "absurd" and she was being blamed for the performance of a coworker whom she did not supervise and who was sufficiently experienced to know the duties of her job without being reminded of them by claimant. Transcript at 26. Based on this "terrible" conversation, claimant decided that she needed to leave work. Transcript at 9, 22,-23, 24, 26, 28.

(6) On approximately May 27, 2015, claimant sent a letter of resignation to the employer's vice-president and the human resources representative stating that she was quitting work effective June 8, 2015. In response to claimant's resignation, the vice-president asked her if she had considered taking a job with the employer other than that of a project coordinator.

(7) Shortly after May 27, 2015, claimant spoke with a coworker about the failure of the employer's management to turn down work when it allegedly exceeded the capacities of the employer's project coordinators to perform. This coworker told claimant that this attitude did not originate with the employer's upper management, but probably came from the local vice-president or the district manager. Transcript at 12. Claimant then spoke with the employer's vice-president, who formerly was an owner of Horizon, and she understood him to say that we can "work on the calendar," which she interpreted as meaning that the employer was going to take steps that would curtail the hours that she needed to work as a project coordinator. Transcript at 12-13. By approximately June 1, 2015, claimant had spoken with

another coworker about jobs other than project coordinator that might be available to her if she decided to continue working for the employer, and the coworker mentioned a possible job in accreditation, which was part of source testing. Transcript at 13-14. Claimant decided that she did not want to quit work if she could obtain a transfer to the accreditation position. However, claimant did not notify the employer that she wanted to rescind the resignation that she had submitted on May 27, 2015.

(8) In approximately June 4, 2015, claimant had lunch with the employer's chief executive officer (CEO). Claimant told the CEO that she wanted to take five or six weeks off from work and then return to work in the accreditation position. The CEO told claimant that she would speak with the human resources department to determine if this was possible, but she did not know what the employer would do. Transcript at 14.

(9) On June 8, 2015, the last day of work specified in claimant's resignation letter, an employer representative called claimant. The representative told claimant that the employer was going to consider June 8, 2015 as her last day at work. She told claimant that the employer "might" decide to create a full time position for a year in accreditation. Transcript at 15. The representative further told claimant to call the human resources representative when she "fe[lt] rested" to learn if the accreditation position was available. Transcript at 15.

(10) On June 8, 2015, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Claimant contended in her written argument that after she submitted resignation to the employer on May 27, 2015 she decided she wanted to remain working for the employer, the employer's representatives did not explicitly inform her until her final day that the employer was accepting the initial resignation and, somehow, by this sequence of events, the employer essentially forced her to quit. Claimant's Written Argument at 2. However, at no time between her submission of the resignation and her last day, did claimant communicate to the employer that she was attempting to rescind or revoke resignation. Transcript at 21. Moreover, once a claimant has submitted an initial resignation, an employer does not need to formally accept it to make it binding on claimant, even after claimant has attempted to retract the resignation. *Counts v. Employment Department*, 159 Or App 22, 976 P2d 96 (1999); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). Here, the vague statements of the employer's CEO and its other representatives about the possibility of claimant returning to work in an accreditation position after she submitted her resignation did not operate to undercut the force of the resignation or reasonably to suggest that the employer had decided to reject it. At best, the employer made a tentative and uncertain offer of possible new work after claimant quit. Claimant's work separation was a voluntary leaving according to the terms of her resignation on June 8, 2015.

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.

Claimant appeared to contend at points in her written argument that because the employer's representatives did not intuit that she had decided to remain at work after she submitted her resignation on May 27, 2015 and acted to enforce that resignation on the date it specified as her final day at work, she somehow had no alternative other than to leave work. Claimant's Written Argument at 1, 2. This argument misses a crucial point. Despite the rationalizations in the argument, the issue is still whether claimant had grave reasons for her initial decision to quit work, as memorialized in the May 27, 2015 resignation. That the employer did not decide to reject the resignation (or perceive that claimant wanted to retract it) does not eliminate claimant's burden to show good cause for submitting that resignation.

Claimant agreed at hearing that the event which caused or "triggered" her decision to leave work was the human resources representative stating that claimant did not effectively communicate instructions to the coworker and that claimant had a "terse" attitude or affect in the office. Transcript at 9, 22-23, 24, 25, 26. Aside from her dislike of the use of the word "terse" to describe her behavior and the unfairness she perceived in being mildly critiqued for the communication style she used with the coworker, there was nothing else in that conversation that could have motivated claimant to leave work. There was nothing inherently offensive in the use of "terse," and claimant's description of the human resources representative's innocuous criticism of her communications with the coworker did not give rise to an objectively grave reason for claimant to leave work. Because it was the proximate cause of claimant's decision to leave work, that conversation, as recounted by claimant, did not constitute good cause for her to quit work.

While claimant testified that it did not precipitate her decision to leave work, claimant spent a great deal of time at hearing discussing her "overwork" and the employer's alleged failure to effectively manage its work calendar. Transcript at 7-8, 10-14, 17-21. However, claimant did not identify any harm to her from working 40 hours per week and, on occasion, 50 hours per week rather than the 35 hours that she had been working for Horizon. Without additional, specific evidence concerning the effect of the increased work hours on claimant, her health or her well-being, we cannot infer that a 40 to 50 hour work week is a workload so excessive that it constituted a grave reason to leave work based on the number of hours alone. To the extent that claimant might have decided to quit work when she did based on the number of hours she was required to work, claimant did not meet her burden to show that those hours were good cause to quit.

Claimant did not show that grave reasons caused her to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-43674 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: October 7, 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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