

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1120

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120222). Claimant filed a timely request for hearing. On September 14, 2015, ALJ Shoemake conducted a hearing, and on September 14, 2015 issued Hearing Decision 15-UI-44533, affirming the Department's decision. On September 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Solberg/Adams LLC employed claimant from November 1, 2012 to June 12, 2015.

(2) In 2012, the employer merged with a company claimant had worked for since 2002. The company claimant had worked for emphasized technical telecommunication auditing services, whereas the employer emphasized expense management services. Claimant's skills were not a good match with the direction the employer wanted to take its business. Claimant and the employer had difficulty deciding what claimant's role with the company should be, and claimant felt uncertain about her future.

(3) In approximately early 2015, the employer hired a new president to take the business in a new direction. By mid-2015, claimant was the only remaining employee who had worked for the business that had merged with the employer in 2012. Claimant and the employer's new president had difficulty defining claimant's role with the employer, and had difficulty communicating. Claimant thought the president did not understand claimant's skills, what her role should be in the employer's business, or whether the employer needed someone with claimant's auditing skills to work for the employer. Claimant also felt defensive because of some statements the president made to her, such as one comment to stop acting childish.

(4) On May 12, 2015, the president asked claimant if she just worked for the employer to collect a paycheck, and whether she wanted to be there. Claimant felt as though the president did not want her to continue working for the employer. Claimant did not see a way to improve her relationship with the

president after making attempts to do so for several months. The same day, claimant initiated a meeting with the employer's human resources person to discuss whether she had a future with the company. As a result of the meeting, claimant and the employer agreed that it would be best for claimant's employment to end. Claimant was given the option to leave in either thirty or sixty days, and chose to leave after thirty days.

(5) Had claimant not initiated the May 12, 2015 conversation, the employer might have taken action to end claimant's employment in the future, but would not have ended her employment on that date.

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

Claimant testified that she did not quit her job.¹ However, for purposes of unemployment insurance benefits determinations, the administrative rule, and not the parties' characterization of the work separation, establishes the nature of the work separation. The applicable administrative rule states, in pertinent part, that 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; 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.²

Claimant's work separation occurred because of a mutual agreement between claimant and the employer to end the employment relationship. Had claimant not initiated the May 12th conversation and agreed to end her employment, it is more likely than not that the employer would have continued to employ her. Because claimant was the moving party in initiating the separation, and it likely would not have occurred when it did but for her agreement, the work separation was a voluntary leaving.

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.³ "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.⁴ The standard is objective.⁵ 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 had a difficult relationship with the employer's president, felt defensive because of the way in which he communicated with her, questioned whether the president wanted her to continue working, and was uncertain about her role and future with the employer's business. However, claimant did not establish that her situation was so grave that she had no reasonable alternative but to

¹ Audio recording at ~ 7:40.

² OAR 471-030-0038(2) (August 3, 2011).

³ ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

⁴ OAR 471-030-0038(4).

⁵ *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

leave work. Some grave situations are defined by administrative rule, for example, when an individual gets another job with better pay, has to care for a sick child, or experiences a reduction in hours so great that it costs more to work than the individual is paid.⁶ Other grave situations include, for example, when an employer subjects the individual to unlawful working payroll practices, abuse or discrimination, or when an individual becomes so physically or mentally incapacitated that the only way he or she can maintain employment is to take a protracted and unpaid leave of absence.⁷ When asked by the ALJ why she quit when she did, however, claimant testified,

It just didn't feel like a conducive environment for either one of us. It was that he and I couldn't reach a middle ground, and then tried over and over and . . . You know, there were comments that were made that I, you know, I am a sensitive person, and when I feel like integrity as an employee is being, you know, questioned, then, you know, that's when I have to start wondering if it's mutually beneficial for everyone. And, I didn't quit my job, I didn't walk out on them, it just, it is what it became.⁸

The situation claimant described was not consistent with the types of grave situations described in the administrative rules or case law, and was not so grave she had no reasonable alternative but to leave work. Although claimant was upset by the president's comments or his questioning of her commitment to the job, claimant did not establish that the president's comments or other behavior toward her were abusive or created an oppressive work environment for her, or that her uncertainty about her role within or future with the company was such a grave situation that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

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

DECISION: Hearing Decision 15-UI-44533 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 13, 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.

⁶ *See* OAR 471-030-0038(5).

⁷ *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998); *Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980); *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979).

⁸ Audio recording at ~ 31:20.

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