

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1128

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93216). Claimant filed a timely request for hearing. On September 8, 2015, ALJ Shoemake conducted a hearing, and on September 21, 2015 issued Hearing Decision 15-UI-44271, affirming the Department's decision. On September 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he presented new facts about the alleged circumstances causing him to leave work. Claimant did not explain why he did not offer these new facts into evidence during the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-042-0090(2) (October 29, 2006). For this reason, EAB did not consider the additional facts that claimant presented. EAB considered only information received into the record during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Bridge West Apartments, LLC employed claimant as an apartment complex manager from March 1, 2006 until June 15, 2015.

(2) Beginning in approximately 2009, the employer's owner allowed claimant to keep and use the owner's boat for fishing and other recreational purposes. Over time, claimant placed personal items in the boat for easy access and use.

(3) Sometime before 2015, the owner gave claimant a spiral bound notebook in which he expected claimant to keep a daily log of the work activities that he performed. While claimant did not refuse to keep the log, he often did not make daily entries, or summarized a week's tasks only as "general maintenance," rather entering detailed descriptions of his daily activities. Audio at ~19:06. On several occasions, the owner reminded claimant that he wanted him to keep a daily and detailed work activity log. Also sometime before 2015, the owner told claimant that he wanted him to prepare a "Monday report," noting significant events that occurred in the apartment complex during the prior week, such as

tenants giving notices of leaving or major maintenance or repair tasks that had been accomplished. Audio at ~ 19:36. The owner intended the report to prompt him to accomplish necessary follow up tasks. Claimant was lax about preparing the Monday reports and the owner often needed to request the reports from him. Claimant disliked it when he thought the owner was trying to “micromanage” him. Audio at ~8:22.

(4) Sometime very shortly before June 15, 2015, the owner came to the apartment complex and told claimant that he wanted to get his boat. Claimant unhooked the boat and the owner took it with him. The owner wanted to allow another friend to use the boat. When the owner took the boat, he did not notice that any personal items of claimant’s were in it. Claimant was upset about the owner taking possession of the boat, and that the owner had not returned the personal items in the boat within a very few days of removing the boat.

(5) On June 15, 2015, claimant left a resignation letter on the owner’s desk in the office. The letter stated that “due to circumstances beyond my control, I am no longer able to fulfill my position as manager.” Audio at ~ 6:43. On that day, claimant voluntarily left work. Claimant did not thereafter return to the workplace. Continuing work was available for claimant.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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.

While claimant contended that he left work because the owner “micromanaged” him to the extent that it was “overbearing,” he did not present any evidence that the owner’s behavior created an ongoing abusive, oppressive work environment of the type that EAB has previously determined was good cause to leave work. See *McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits); *Beth A. Jackson* (Employment Appeals Board, 13-AB-0502, April 2, 2013) (ongoing unwanted sexual advances and touching despite making complaints); *Brenda A. Kordes* (Employment Appeals Board, 12-AB-3213, January 8, 2013) (ongoing sexual harassment); *Stephen G. Wilkes* (Employment Appeals Board, 12-AB-3173, December 14, 2012) (ongoing verbal abuse despite complaints); *James D. Hayes* (Employment Appeals Board, 11-AB-3647, February 9, 2012) (sexist and ageist remarks); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor’s ongoing verbal abuse and fits of temper); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management’s ongoing ageist comments and attitudes); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-

2272, September 6, 2011) (supervisor's regular fits of temper and verbal abuse). Notably, claimant did not identify any specific harm to himself from the owner's alleged behavior, or present any evidence showing that the owner's behavior would have been considered intolerable by a reasonable person of normal sensitivities. Although claimant might have disliked the manner in which the owner exercised control, claimant did not meet his burden to show that the owner's behavior constituted a grave reason compelling him to leave work.

Claimant also contended that the event that caused "it all to come to a head" was the owner's taking possession of the boat shortly before June 15, 2015 and failing to return the personal items that claimant had stored in the board. Audio at ~9:08. Claimant did not contend that the owner did not own the boat or that he did not reasonably understand that, at some point, the owner was going to retake possession of it. It is impossible to conclude, on these facts, that the owner re-taking lawful possession of the boat was a grave reason for claimant to leave work. That the owner might not have immediately been aware that claimant had some personal items on the boat and did not return them was also, in and of itself, not a grave reason to leave work. Assuming the accuracy of claimant's testimony that he sent a text message to the owner requesting the return of the items "just prior to June 15, 2015," the failure of the owner to reply immediately to that text message does not suggest or tend to suggest that the owner was not going to return them within a reasonable time after receiving notice that claimant wanted them. As well, there was no evidence that the owner ever received the text message, or that the owner even had his phone with him when the text was allegedly sent. *See* Audio at ~18:00. A reasonable and prudent person in claimant's circumstances, exercising ordinary common sense, would not have concluded that the owner did not intend to return his items because the owner failed to respond immediately to a text message requesting their return. At a minimum, a reasonable and prudent person would have contacted the owner by another means to ensure that his demand to return the items had actually been communicated. For this reason, claimant did not meet his burden to show that the owner's lack of response to claimant's text message was a grave reason to leave work.

Claimant did not demonstrate that objectively grave circumstances motivated his decision to leave work, and that he had good cause for doing so when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-44274 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 20, 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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