

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1321

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133020). Claimant filed a timely request for hearing. On October 14, 2015, ALJ Wyatt conducted a hearing, and on October 23, 2015 issued Hearing Decision 15-UI-46472, affirming the Department's decision. On November 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pacific Belting, Inc. employed claimant as vice-president of sales and marketing from May 10, 2010 until August 21, 2015. Claimant earned approximately \$200,000 per year in his position.

(2) On August 20, 2015, claimant's supervisor asked him to explain why a customer had cancelled a \$16,000 order. The supervisor was displeased at claimant's response and thought that claimant did not provide a sufficient explanation. The conversation became heated.

(3) On August 21, 2015, the supervisor approached claimant early in the workday and wanted a more complete explanation of what claimant had done with "deal" that resulted in the customer's cancellation of the \$16,000 order. Audio at ~18:56. The conversation again became heated. At the conclusion of the conversation, the supervisor told claimant to go home for the day and that he was suspended. Audio at ~9:46. Claimant stood around his desk for a short time, and then started to disconnect his electronic devices in preparation for leaving. The supervisor instructed claimant to leave and not take his hard drive with him because the employer's information was stored on it. Claimant refused to leave without the hard drive. Claimant then stated that he considered the supervisor to have discharged him. Audio at ~19:50. The supervisor told claimant that he was not discharged. Audio at ~20:00. Claimant left the workplace with his hard drive.

(4) Sometime later in the day on August 21, 2015, claimant sent a text message to the employer's accountant, who was also the employer's human resources representative, asking to have his final

paycheck sent to him. The accountant replied to claimant's text message stating that he had been suspended and not discharged. The accountant sent a second text message to claimant stating that he was not discharged. Claimant continued to demand his final paycheck from the accountant. Claimant's supervisor told the accountant to send claimant's paycheck to him and she did so.

(5) Sometime after claimant left the workplace on August 21, 2015, claimant left a telephone message for an acquaintance who was also a former employee of the employer. In that message, claimant stated that he was "not in a happy situation" and he needed to "figure out a life that is not revolving around the fact that I do all the work and somebody else takes all the credit and I get no credit whatsoever." Audio at ~ 35:55. Claimant went on to state, "I've thrown them [the employer] \$25 million in business and I'm being treated like a fucking pulper [sic]. I'm not going to deal with it anymore. I don't need to deal with it" and "I've got to branch out on my own," "take that next step and be what I should be, not small time [but] big time, we're talking billions." Audio at ~36:46. Claimant also said that "I've got to change something, personally and professionally. I can make tons of money, don't get me wrong." Audio at ~37:15. Claimant went on to state that "every [work] day is a disrespectful journey," and he objected to others taking "advantage" of his work in the workplace and that no one was "apologetic" about it. Audio at ~37:25. Claimant then referred to questions asked of him in the workplace about "why did [my] deals go away?" when he had "all kinds of deals going on." Audio at ~37:30. Claimant proceeded to say, "We all know what comes with me going somewhere [else], I can take [inaudible] millions of dollars" and if "I go away, people hit the unemployment line. I don't want that to happen. I'm too nice a person for that but they don't respect me enough to tell me [inaudible]. Audio at ~ 37:46. Claimant then said, "Maybe I need to go away" and "I can pull it off and they can't. They keep plugging [sic] shit up their ass, blowing smoke up their ass like they've got something going on and it's not. Never an apology. I give up on the whole [inaudible]. I'm gonna let them go flat [inaudible]. Audio at ~38:37.

(6) After August 21, 2015, claimant did not contact his supervisor or any other employer representative to inquire about the status of his employment. Claimant voluntarily left work on August 21, 2015. Claimant did not return to work after August 21, 2015.

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

The Nature of the Work Separation. Claimant contended that the employer discharged him on August 21, 2015 when his supervisor unexpectedly became enraged, told him to leave the workplace and "don't come back" and sometime later disconnected his email account and cancelled his company credit card. Audio at ~5:57. In contrast, claimant's supervisor testified that he suspended claimant on August 21, 2015 and, in response to claimant's statement that he considered himself to have been discharged by the employer, the supervisor told claimant that he was not discharged, but merely suspended. Audio at ~ 18:40, ~20:00. The supervisor also testified that after his conversation with claimant, the employer's accountant told claimant twice in response to his demands for his final paycheck that his supervisor had not discharged him, but only suspended him. Audio at ~20:06. The standard for determining whether a work separation was a voluntary leaving or a discharge is set out in OAR 471-030-0038(2) (August 3, 2011). If claimant could have continued to work for the employer for an additional period of time when the work separation occurred, the separation was a voluntary leaving. OAR 471-030-0038(2)(a). If claimant was willing to continue to work for the employer for an

additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

While claimant's and his supervisor's testimony about the work separation was irreconcilable, the contents of the recorded phone message that claimant left for his acquaintance after the interaction with the supervisor on August 21, 2015 most clearly corroborates the employer's account of that conversation. Notably, claimant did not dispute that it was his voice on the recorded message or that he had called and left that message for the acquaintance on August 21, 2015. To explain his recorded message, claimant asserted that his voice on the recording showed that he was angry over having been discharged.¹ Audio at ~39:30, ~41:59. However, the contents of claimant's recorded message do not refer to a discharge or suggest that he was involuntarily separated from the employer. While the recorded message showed that claimant was displeased with the employer's treatment of him, its contents indicated that that it was he who was considering "going away," or leaving the employer of his own volition and that he was not under the impression after the August 21, 2015 conversation that the employer was not willing to allow him to continue working if he chose to do so. Whatever the supervisor told claimant during the conversation on August 21, 2015, it does not appear that claimant plausibly construed those statements as a discharge. By not returning to work after August 21, 2015, claimant made the first unequivocal manifestation that the work relationship was severed. Claimant's work separation was a voluntary leaving on August 21, 2015.

The Voluntary Leaving. 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). 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.

Because claimant insisted that he was discharged, he did not provide any reasons that might have motivated him to leave work. In fact, he stated that he had a "fine relationship" with his supervisor during the over five years that he worked for the employer and he did not know the "backstory" to his supervisor's displeasure with him on August 21, 2015. Audio at ~ 8:27, ~8:40. From the phone message that claimant left for his acquaintance on August 21, 2015, however, it can be discerned that claimant perceived the employer did not value the worth of his services sufficiently and took advantage of him.

While claimant might have felt that his services were undervalued, he did not show that the employer's lack of appreciation was a grave reason to leave work. Claimant was well compensated for his work, and he did not show that any personal or professional harm resulted from this alleged lack of appreciation. Although some of claimant's phone message showed anger toward some of the

¹ Claimant did not seriously contest the admissibility of the recorded phone message. Audio at ~41:59. However, the recording meets the standards for admissibility in an administrative proceeding governed by Oregon law since claimant was obviously aware that the message he left was being recorded and the acquaintance to whom claimant left the recorded message apparently consented to its dissemination to the employer. See ORS 165.540(1)(a), (c).

employer's employees in questioning the manner in which he handled deals, nothing in the message suggested that these encounters were anything more than the types of explanations that a manager, like claimant, may be requested to make after a business transaction falls through. Nothing appeared in the message that indicated the encounters were abusive or created the type of ongoing oppressive work environment that the courts and EAB have previously held could constitute a grave cause to leave work.² Even if claimant considered his supervisor's attitude during the August 21, 2015 interaction hostile, it was, by his own admission, an isolated and aberrant angry outburst by the supervisor and not part of an ongoing pattern of such behavior. Audio at ~ 8:27, ~8:40. On those facts, a reasonable and prudent business executive, exercising ordinary common sense, would not have concluded that an isolated instance of hostile behavior by his supervisor when a large order was cancelled was a grave reason to leave work until he had tried later to resolve the situation with the supervisor or had determined that the supervisor was unwilling to treat him in the future according to a minimum level of professional workplace standards. Because claimant did not show that he was treated abusively in the workplace or that such behavior by his supervisor was likely to be repeated, claimant did not show that his supervisor's treatment of him was a grave reason to leave work.

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

Susan Rossiter and J. S. Cromwell.

DATE of Service: December 10, 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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² *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).