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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1362

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 163028). Claimant filed a timely request for hearing. On November 5, 2015, ALJ L. Lee conducted a hearing, and on November 12, 2015 issued Hearing Decision 15-UI-47533, affirming the Department's decision. On November 16, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) All Animals Are Heavenly, LLC employed claimant as a dog daycare and grooming manager from September 7, 2012 to July 2, 2015. Claimant had a previous term of employment with the same employer.

(2) Claimant was upset with some of the other employees. She believed they were cliquish and excluded her, and believed they received preferential treatment from the owner. Claimant also believed that two employees, Renee and Tia, badmouthed her. Claimant did not complain to the owner about the employees.

(3) Claimant also was upset that the owner and other employees discussed claimant's personal life behind her back and disapproved of some of her personal choices. Claimant did not complain to the owner or ask her to stop discussing claimant's personal choices with other employees.

(4) Over time, the owner developed concerns about claimant's work performance. On June 29, 2015, the employer's owner wrote a letter to claimant expressing her dissatisfaction with claimant's work performance and telling claimant that she would no longer be a manager. On July 1, 2015, the owner gave the letter to claimant.

(5) Claimant was upset after reading the letter. She considered it "a malicious, hurtful, personal attack" rather than a performance evaluation or constructive criticism. Exhibit 1. She felt hurt, and, on July 2, 2015, returned a written response to the owner's letter stating, for the first time, that she thought the

workplace was "hostile," and also stating that she "physically and mentally could not stay there any longer." Transcript at 7. Prior to that letter, claimant had never before complained that the workplace was hostile, that Renee and Tia badmouthed her, or that she disliked the owner discussing claimant's personal choices with other employees.

(6) Claimant knew continuing work was available for her after July 2, 2015, but did not intend to return to work after she submitted her response to the employer's June 29th letter. Claimant last worked for the employer on July 2, 2015, and chose not to return to work thereafter.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without 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 her employer for an additional period of time.

Claimant quit work because she believed the workplace environment was hostile. Two coworkers badmouthed her, and the employer criticized some of claimant's personal choices behind her back with other employees. Claimants are not required to endure slurs or personal abuse for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits.[1] Generally speaking, however, the type of oppressive working conditions that are considered grave enough to amount to good cause for quitting work are those in which the claimant is subjected to ongoing unwanted sexual advances and touching despite complaints, ongoing sexual harassment, ongoing verbal abuse, sexist and ageist remarks, fits of temper, hostility and slurs based on gender or other protected classes, or assault.[2] In comparison to those types of working conditions that are generally considered hostile and grave, the working conditions claimant described did not place claimant at risk for her physical or mental safety or health, or otherwise amount to grave conditions.

On this record, even if claimant had quit for reasons considered grave, claimant had a reasonable alternative to leaving work. She could have notified the employer's owner that she considered the

[1] *McPherson v. Employment Div.*, 285 Or 541, 557, 591 P2d 1381 (1979) (so stating).

[2] *See e.g. 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).

workplace hostile, that Renee and Tia badmouthed her, and that she did not like it when the owner discussed and criticized her personal choices in the workplace. She could then have asked that the owner address or resolve those issues. The only reason claimant provided for not doing so was that she thought the owner was no longer "approachable," "does not like confrontation," and "will not discuss things." Transcript at 21. Assuming that was the case, claimant still did not explain why it would have been futile for her to put her concerns in writing, as she felt comfortable doing on July 2nd, and thereby giving the owner the opportunity to address or respond to her concerns. By putting her concerns in writing, claimant would not have had to approach the owner, confront her, or discuss matters, and might have been able to improve her working conditions. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have left work under the circumstances claimant described without, at a minimum, notifying the employer of her concerns and allowing the employer some reasonable period of time to address them.

Claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 15-UI-47533 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: **December 18, 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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