

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1394

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 110415). Claimant filed a timely request for hearing. On November 5, 2015, ALJ S. Lee conducted a hearing, and on November 10, 2015, issued Hearing Decision 15-UI-47506, affirming the administrative decision. On November 30, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record.

FINDINGS OF FACT: (1) A-B Enterprises employed claimant, last as manager of its Flying J Travel Plaza from December 27, 1989 to September 3, 2015.

(2) Claimant's supervisor was the employer's chief executive officer (CEO). The employer's owners were the CEO's four children.

(3) In approximately February 2015, the CEO's attitude toward and relationship with claimant began to change. The CEO watched the surveillance cameras placed in the travel plaza claimant managed, and regularly called claimant to tell her about a concern or problem in the business, e.g., a lack of doughnuts or a customer in the restaurant who was not being promptly served. The number of these calls varied, but at times, the CEO called claimant three to four times a day.

(4) In March, the CEO printed pictures of employees setting up a banquet from the surveillance cameras in the travel plaza claimant managed. The CEO showed these pictures at a managers' meeting, and questioned the need to have so many people setting up the banquet. Claimant was offended by the

CEO's display of these pictures. She talked with the CEO about the pictures, but was dissatisfied with his response.

(5) On May 29, 2015, one of the employer's employees sent claimant the following email regarding a check an employee whom claimant supervised had accepted:

I thought we just talked about what kinds of checks are accepted and what not to accept and this is a check that should not have been accepted. If you need to know what to train your employees on what to except [sic] and what not to except [sic] let me know and I can send you some examples, so you can train them properly, if they are getting trained on this. Exhibit 1.

Claimant was offended by this email because she believed the employee was telling her she was not properly training the employees whom she supervised. Claimant spoke to the CEO about the email; the CEO spoke to the employee who sent the email, who subsequently apologized to claimant.

(6) At a July 2015 managers' meeting, the CEO told claimant that she should spend more time out on the floor. Claimant was upset by this remark, because she interpreted the statement as an indication that the CEO believed that she and other managers were lazy. Claimant asked the CEO why he was treating her that way, but the CEO did not respond. Transcript at 9-10.

(7) On August 3, 2015, the employee who delivered oil to the employer's businesses called the travel plaza where claimant worked and asked to speak to claimant. When the caller was told that claimant was busy, the caller replied: "What is she doing, taking a crap?" When claimant learned about this remark, she was offended. She spoke to the CEO, who talked with the employee and told him that the remark he made to claimant was inappropriate.

(8) On September 2, 2015, claimant sent an email to the employer's human relations manager, asking that a paycheck be issued to an employee whose last day of work for the employer would be September 3. The human relations manager responded with the following email:

Payroll was already submitted yesterday, so I won't be able to put her [the employee leaving] on a manual check. Had I known she was leaving, I could have done her check no problem.

When employees are leaving, it is critical that I know as soon as they put in their notice so I can plan around the payroll cycle. Once payroll has been submitted, I can't go back and make any changes or pull employees out to do a manual check.

I know I probably sound like a broken record since I bring this up every manager meeting, but we need to work out a way to communicate when employees give notice so I am kept in the loop and the employee isn't the one that suffers by having to wait for their check. Exhibit 1.

Claimant thought this email indicated hostility on the part of the human relations manager. She responded with an email in which she apologized for being an “idiot,” and told the human relations manager she would try not to “mess things up” in the future. Transcript at 8.

(9) At a September 3, 2015 managers’ meeting, claimant discussed her September 2 email exchange with the human relations manager and stated that she believed it indicated hostility between those employees who worked in the employer’s office and those who managed the employer’s businesses. One of the employer’s owners said that claimant’s September 2 email indicated some hostility on her part. Claimant responded that the human relations manager’s email made her feel like an “idiot.” The CEO crossed his arms and stated “Well.” Based on his comment and his body language, claimant believed that the CEO considered her to be an idiot. She threw her keys on the table and left the meeting.

(10) After she left the September 3, 2015 meeting, claimant never returned to work for the employer. She quit her job because she believed that other employees treated her disrespectfully and with hostility, and that the employer would not address these problems.

CONCLUSION AND REASONS: We agree with the ALJ, and conclude 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 her job because she believed that other employees treated her disrespectfully and with hostility, and because she concluded that the employer would not address her concerns. Claimant cited a number of examples of treatment she believed was hostile and disrespectful: increased scrutiny of her work by the CEO, distribution of pictures taken from the surveillance cameras at a managers’ meeting, an email she received regarding improperly accepted checks, comments made by the CEO about her work at a July 2015 meeting, and a vulgar remark an employee made about her inability to answer the phone in August 2015. While these incidents may have been upsetting for claimant, a reasonable and prudent person, exercising ordinary common sense, would not have found that they created a grave situation that would have compelled the person to leave work. Two of these incidents were promptly resolved by the CEO: the employee who sent claimant an email about improperly accepted checks apologized to claimant, and the CEO admonished the employee who made a vulgar remark about claimant in August 2015. The CEO’s phone calls to claimant regarding her work involved tasks that he, as claimant’s supervisor, expected her to perform; he never asked claimant to perform any tasks outside the scope of her job. The employee pictures the CEO showed to managers were not meant to humiliate or embarrass employees. By showing the pictures to the managers, the CEO reasonably intended to question the managers’ assignment of staff to a particular task. The comments the CEO made at the July

2015 managers' meeting – that claimant should spend more time on the floor – constituted a supervisor's reasonable instructions regarding an employee's workplace behavior.

Finally, claimant failed to show that the final incident that was the proximate cause of her September 3, 2015 resignation – the discussion at the September 3 managers' meeting about her email exchange with the human relations manager – constituted a situation so grave that claimant could no longer continue working for the employer. The September 2 email from the human relations manager, which was a primary topic of discussion at the managers' meeting, was not excessively critical of claimant, and we find nothing in that email that would cause a reasonable person to feel stupid. Nor do we conclude that a reasonable person would have been upset by the September 3 discussion about this email. A reasonable person could have disagreed with the comments made by the employer's owner, that claimant's September 2 email indicated some hostility on claimant's part, but would not have felt personally attacked by these remarks, as claimant did. Nor would a reasonable person conclude that the CEO's comment and body language at the September 3 meeting showed that the CEO believed claimant was an "idiot."

Claimant also failed to demonstrate that the employer was either unwilling or unable to address her concerns. As discussed above, the CEO resolved two problems claimant brought to his attention – the email concerning improperly accepted checks and the vulgar comment an employee made about claimant's inability to answer the telephone. At the September 3 meeting, both the employer's owner and the CEO indicated a willingness to discuss the issue raised by claimant – hostility between managers and the office staff. Claimant ended the discussion, however, by leaving the meeting and quitting her job. A reasonable person would have attempted to resolve her concerns, either by remaining at the September 3 meeting to discuss them or talking with the CEO or employer's owner at another time.

Based on this record, we conclude that a reasonable and prudent person would not have left work when claimant did. Because claimant voluntarily left work without good cause, she is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-47506 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 5, 2016

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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