

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1494

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121136). Claimant filed a timely request for hearing. On December 2, 2015, ALJ M. Davis conducted a hearing, and on December 7, 2015 issued Hearing Decision 15-UI-48877, affirming the Department’s decision. On December 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seashore Inn employed claimant as a front desk agent from July 13, 2013 until October 15, 2015.

(2) Prior to September 8, 2015, claimant had experienced the workplace as having a “family friendly, upbeat atmosphere.” Audio at ~11:10. On September 8, 2015, the employer hired a new manager to facilitate a transition from a business model in which its manager resided on the property to a more traditional one in which its manager resided off-site. The new manager had a very different management style from that of the previous manager. He was more distant and less friendly than his predecessor. Many employees had difficulties adjusting to the transition in management.

(3) After September 8, 2015 and continuing throughout the remainder of her employment, claimant perceived that the new manager was not often on the work premises and when he was there his attitude was “strictly business.” Audio at ~11:12. Claimant disliked that the new manager “never had any eye contact” with her. Audio at ~10:56. Claimant mentioned to her direct supervisor that she found it difficult to interact with the new manager and her supervisor told her she needed go to the new manager and try to talk with him. On two or three occasions between September 8 and early October 2015, claimant brought up generally with the director of the property management company that oversaw the employer’s operations that it was hard for her to interact with the new manager. The director told claimant that adapting to “change was hard,” “to give it time” and asked for her “patience and support” during the transition to new management. Audio at ~16:10, ~18:30. Claimant did not identify any

specific difficulties she had with the new manager or any harms she experienced from the new manager's style.

(4) On October 10, 2015 claimant saw the new manager searching the employees' workplace boxes, where they stored personal belongings, and thought she saw him removing the tips the employee had earned from their boxes. Claimant told a coworker what she had observed and that she did not think it was acceptable for the new manager to search and take tips from the employees' boxes. Very shortly thereafter, the coworker told the new manager what claimant had said. The new manager approached claimant at the front desk and, in front of a guest and one of claimant's coworkers, told claimant that he was permitted to search the employees' boxes because he was the employees' manager. Claimant thought the manager should not have discussed this matter with her in front of others. Claimant did not inform either her direct supervisor or the director of the property management company that she had seen the new manager searching the employees' boxes or that she thought it had been inappropriate for the new manager to correct her in the presence of others.

(5) Later on October 10, 2015, after the incident with the new manager, claimant asked the new manager if she could work in the housekeeping department. The new manager told claimant that "he would have to see if he can consider it." Audio at ~9:40. Later that same day, claimant told the new manager that she was giving two weeks' notice and her last day of work was going to be October 25, 2015.

(6) On October 15, 2015, claimant was absent from work due to the illness of her children and the new manager told her she could not return to work unless she brought in a note from a physician. Claimant did not obtain the note and did not work again. On October 15, 2015, claimant voluntarily left work.

CONCLUSIONS AND REASONS: 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 decided to leave work when she did because she disliked the manner in which the new manager interacted with her and other employees and she thought that it was inappropriate of him to search the employees' personal boxes as well as to "reprimand" her in front of a coworker and a guest. Audio at ~7:03, ~7:23, ~8:16, ~10:53. As claimant described her interactions with the new manager, it appears that she wanted him to have more personal warmth and to be more friendly and accessible in the workplace. No concrete harms to claimant can be identified from what she described of those interactions, and nothing about the manager's behavior as described suggested she was subjected to the type of workplace oppression or abuse that has previously been found to constitute good cause for an employee 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); *Appeals Board Decision*, 13-AB-0502, April 2, 2013 (ongoing unwanted sexual advances and touching despite making complaints); *Appeals Board Decision*, 12-AB-3213, January 8, 2013 (ongoing sexual harassment); *Appeals Board Decision*, 12-AB-3173, December 14, 2012 (ongoing verbal abuse despite complaints); *Appeals Board Decision*, 11-AB-3647, February 9, 2012 (sexist and ageist remarks); *Appeals Board Decision*, 11-AB-3308, December 22, 2011 (supervisor's ongoing verbal abuse and fits of temper); *Appeals Board Decision*, 11-AB-2864, December 12, 2011 (management's ongoing ageist comments and attitudes); *Appeals Board Decision*, 11-AB-3063, October 28, 2011 (corporate culture hostile to women); *Appeals Board Decision*, 11-AB-2272, September 6, 2011 (supervisor's regular fits of temper and verbal abuse). Claimant did not show that the nature of her interactions with the new manager was a grave reason to leave work.

While, if claimant's testimony is accepted, the behavior of the new manager in connection with the employees' boxes, and removing money from them, could be considered troubling, it was not, on the facts in this record, sufficient to constitute a grave reason for claimant to leave work. Claimant had not hesitated to approach her direct supervisor and the director of the property management company when she experienced difficulty adjusting to the new manager's management style. A reasonable and prudent employee, exercising ordinary common sense, would not have concluded that she needed to leave work after observing the new manager searching the employees' boxes and taking from them what she thought were tips earned by other employees without first informing her direct supervisor or the director and giving them an opportunity to explain to why the manager's actions were justified or, if they were not, to take steps, as appropriate, to correct the new manager's behavior. To the extent that claimant left work because she disliked the new manager correcting her in front of others, it does not appear that the manager's brief, relatively mild comment made to claimant in front of others was a significant event or, on the facts as claimant recounted them, a grave reason to leave work. A reasonable and prudent person would have informed her supervisor or the director of the alleged reprimand and would not have decided to leave work until they had an opportunity to address the manager's behavior if it was unjustified. Because claimant did not establish the gravity of her situation, and did not take the steps of a reasonable and prudent person to pursue reasonable alternatives in lieu of quitting, claimant did not demonstrate good cause for leaving work when she did.

Claimant did not meet her burden to show good cause for leaving work. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 15-UI-48877 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: January 12, 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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