

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1508

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 6, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72500). Claimant filed a timely request for hearing. On December 2, 2015, ALJ S. Lee conducted a hearing, and on December 9, 2015 issued Hearing Decision 15-UI-49072, affirming the Department's decision. On December 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he sought to present information and documents that he did not offer during the hearing. However, claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant also did not show that factors or circumstances beyond his reasonable control prevented him from offering the new information he sought to present during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Premier Hotels Associates, LLC employed claimant as the food and beverage director at Riverhouse Hotel and Convention Center from May 1, 2015 until October 8, 2015. Before May 1, 2015, when Premier Hotel Associates, LLC formally hired claimant, claimant had worked at Riverhouse for approximately eight years under its prior ownership.

(2) After March 2015, the employer implemented a plan to transition to new management and to renovate the facility at which claimant worked, including the restaurant. As part of the transition, the employer arranged for employees to evaluate their existing managers. The employees evaluating claimant, stated that he was "too strict" in enforcing the employer's policies. Transcript at 11. However, claimant thought that the management and executive teams were not adequately supporting his efforts.

(3) As the transition progressed, claimant thought the employer was disorganized and not providing sufficient leadership over the operation of the facility. Claimant also needed to follow new procedures that the employer had adopted. Claimant was not familiar with those procedures, and other employees were unable to help him because they also were learning the procedures. Although the employer did not require him to do so, claimant was working very long hours to ensure the success of the restaurant. Claimant felt a great deal of pressure and stress at work. Claimant experienced frustration and confusion about the parameters of his work authority in the employer's organizational structure. Claimant communicated his concerns to the employer's director of human resources and to one of its vice-presidents, but did not think they adequately clarified his role.

(4) On September 24, 2015, the employer hired a new general manager for the facility. Sometime before October 2, 2015, claimant met with the employer's director of human resources to develop a "discussion planner" for his job duties. Transcript at 7. At that meeting the director mentioned that claimant did not appear to communicate well with staff and managers and needed to improve his communication style to "fit the team." Transcript at 9. The "discussion planner" that the director drafted to summarize their discussion identified the issues they had discussed, and contained "action steps" that she expected claimant to undertake in each of those areas. The director expected claimant to add three additional "action steps" that he would take to the "discussion planner." Transcript at 24. Claimant thought that the discussion planner was a "write-up" or a disciplinary action that had been taken against him. Transcript at 7, 9, 31. Later, claimant discussed the "discussion planner" with the employer's vice-president and told him that he considered it a "write-up." Transcript at 8. The vice president told claimant he should not think of the discussion planner as a write-up. Transcript at 8.

(5) Sometime on or shortly before October 1, 2015, the director of human resources contacted claimant for his additions to the "discussion planner" and stated she had expected to receive them by October 1, 2015. Transcript at 6. Claimant replied to the email telling the director he had not responded because the owners had not been in the workplace and he intended to respond with his additions by the end of the day.

(6) Before the end of the day on approximately October 1, 2015, the general manager approached claimant with documents in his hand. Claimant was in the presence of subordinate staff members. Claimant thought that the general manager wanted to present the "discussion planner," which he still considered to be a write-up, to him and wanted to discuss it, and have him to sign it in front of his subordinates. When claimant looked up at the approaching general manager, the general manager left without discussing the documents in his hand. Transcript at 25.

(7) On October 2, 2015, claimant gave the employer a resignation letter stating that his last day was going to be October 8, 2015. Claimant decided to submit his resignation because he thought it was "disrespectful" of the general manager to have wanted to present and discuss a write-up with him on October 1, 2015 in the presence of his subordinate employees. Transcript at 6, 7. Sometime during the evening of October 2, 2015, after he was made aware of claimant's resignation, the general manager called claimant and told him he had not intended to have claimant sign the documents that had been in his hand on October 1, 2015, and that he had wanted to "make it go away" or "to let it go." Transcript at 8, 15.

(8) On October 8, 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 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 testified about various issues he had with the employer’s new management practices and the pressure and stress he experienced when at work, his testimony was clear that the proximate cause, or the factor that motivated him to resign when he did, was the general manager approaching him on October 1, 2015 in the presence of subordinates with what he thought was a disciplinary write-up. Transcript at 6, 7, 15, 31. From the sequence of events leading up to the general manager’s appearance on October 1, 2015, it was not utterly unreasonable for claimant to assume he was carrying the “discussion planner.” However, claimant did not demonstrate that the “discussion planner” was a disciplinary action against him, and from what the employer’s vice-president and the general manager stated to him about “discussion planner,” it may not have been. Transcript at 8, 15. In addition, although claimant’s desire to have a private discussion with the general manager about the “discussion planner” on October 1, 2015 is understandable, claimant testified that when he looked at the general manager, the general manager left with the documents in his hands. Transcript at 25. There is nothing in the record to indicate that the general manager was intending to address the “discussion planner,” if that was what he had in his hands, in front of claimant’s subordinates or was not sensitive to the circumstance that claimant was in the presence of subordinates whom he supervised. Even if the “discussion planner” were a critique of claimant’s management style, there was no basis from which to infer that, if claimant had asked, the general manager would not have discussed the issues it raised in private with him. On these facts, a reasonable and prudent food and beverage director would not have concluded that he needed to quit because his general manager had approached him in the presence of subordinates with certain unidentified documents in his hands which claimant assumed was a disciplinary write-up. It is notable that, although claimant feared the general manager was going to discipline him in front of subordinates on October 1, that never came to pass, and the general manager specifically told claimant he had never intended to do so. A reasonable and prudent beverage director would have taken alternate steps, such as asking the general manager to speak with him in private about the nature of the documents, would have clarified whether or not they should be considered disciplinary in nature and, if they were, would have clarified that the disciplinary sanction was a grave circumstance before quitting work. Because claimant did not take the actions of a reasonable and prudent person before leaving work, he did not show he had no reasonable alternative other than to quit.

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

DECISION: Hearing Decision 15-UI-49072 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: January 20, 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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