

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-1628

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 150845). Claimant filed a timely request for hearing. On December 24, 2014, ALJ S. Lee conducted a hearing at which the employer did not appear, and on December 30, 2014 issued Hearing Decision 14-UI-31071, affirming the Department's decision. On January 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) High Speed Interconnect employed claimant assembling electrical components from August 4, 2014 until October 17, 2014. Claimant earned \$15 per hour for this work, which was far higher than most work for which claimant was qualified.

(2) During her employment, claimant worked under a team leader named Chan Nguyen (Nguyen). It was Nguyen's practice to yell and scream at the workers on the assembly line. Nguyen generally treated claimant and the other assembly workers very poorly. As a result of Nguyen's behavior, claimant was often under stress at work and could not sleep at night. Claimant became so apprehensive about reporting for work that during her commute she thought she could not control her car.

(3) During her employment, claimant at times told Nguyen's supervisor, "Sharon," that she disliked the manner in which Nguyen treated her and it "stressed [her] out." Transcript at 11. Sharon usually responded to claimant's concerns only by telling claimant that she needed to listen to Nguyen. Sharon often emphasized to claimant that she was not the person who hired claimant for her job, apparently suggesting that she did not want to hear claimant's complaints. In claimant's prior jobs, human resources departments were available to address workers' concerns, but the employer did not have such a department. On at least one occasion, claimant said something that suggested to Sharon that claimant intended to contact the employer's manager, "Alex," about her concerns and the effects of Nguyen's behaviors on her. Sharon told claimant she was allowed to speak to Alex only about "technical issues"

and not about behaviors in the workplace. Transcript at 11. Sharon told claimant that claimant was allowed to make complaints only to her because she was the "supervisor." Transcript at 11.

(4) During claimant's employment, claimant discovered that she had not been supplied the tools and equipment that she needed to perform her work adequately. Claimant spoke with one of the employer's engineers about her difficulties. The engineer gave Sharon a list of equipment that she needed to procure for claimant. Claimant never received that equipment.

(5) On October 16, 2014, Nguyen again yelled and screamed at claimant when she was working on the assembly line. Claimant did not understand the reason for Nguyen's behavior. Claimant spoke to Sharon about how much she objected to Nguyen's treatment of her and how much it upset her. When claimant had finished, Sharon left and later that day spoke to claimant again. Sharon told claimant that Nguyen had stated to her that he had behaved as he had because claimant and another assembly line worker were "bothering" the line and that "he has a right to yell at us." Transcript at 6. Sharon told claimant that she needed to listen to Nguyen. Sharon then told claimant, as she had many times before, that she had not hired claimant. Sharon then retrieved claimant's personnel file and looked at claimant's employment application and resume. Sharon told claimant that, based on claimant's experience and work performance, she did not "deserve" to receive the "very high" wage of \$15 per hour for her work. Transcript at 8. Claimant told Sharon that Nguyen had not trained her to perform the work that Sharon mentioned as being deficient. Sharon concluded the conversation by telling claimant she was going to "investigate" to determine if claimant's wage should be reduced. Transcript at 8.

(6) On October 16, 2014, claimant went home from work at her usual ending time of 3:30 p.m. From her home, claimant tried to reach Alex, the manager, to discuss Sharon's and Nguyen's recent behaviors. Claimant was unable to contact Alex directly and left a message. Claimant waited all evening but Alex did not return her call. Claimant was unable to sleep that night. The next morning, when Alex had not returned her call, claimant decided to leave work. Claimant went to the workplace early that morning and returned her work uniform and cleaned out her work locker. Claimant did not tell Alex, Sharon, Nguyen or any other representatives of the employer that she was quitting work. Beginning on October 17, 2014, claimant did not report for her scheduled work shifts.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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.

In Hearing Decision 14-UI-31071, the ALJ concluded that claimant did not show good cause for leaving work when she did. The ALJ reasoned that, while Nguyen's behavior might have been inappropriate and Sharon might have been threatening to reduce claimant's pay, a reasonable and prudent person in

claimant's position would not have considered those sufficiently grave reasons to leave work after only three months on the job but would have "remained with the employer for an additional period of time, to give her working relationship with the supervisor[s] a chance to improve or speak with another manager." Hearing Decision 14-UI-31071 at 3. The ALJ also reasoned, alternatively, that a reasonable and prudent person in claimant's position also would not have left work before giving the manager, Alex, a reasonable amount of time to return her phone call about Nguyen's and Sharon's recent behaviors and threats. Hearing Decision 14-UI-31071 at 3. We disagree.

The employer did not appear at hearing, and there was no evidence disputing claimant's testimony. Based on claimant's un rebutted description, the impacts of Nguyen's behaviors on her emotional state were likely very serious. Because of the unbroken pattern of Nguyen's abusive behaviors, Sharon's consistent refusal to check those behaviors after claimant's complaints and Sharon's transparent threat to reduce claimant's pay if claimant made any more complaints about Nguyen, it appears to us that a reasonable and prudent person would not have concluded that this pattern would improve over time. If anything, the final threat that Sharon made to claimant about reducing her pay most reasonably is evidence of an escalation in Sharon's behavior and demonstrates the strength of her refusal to address claimant's legitimate concerns. It also represents an escalation in the level of abuse to which claimant was subjected since both Sharon and claimant knew that claimant was unlikely to obtain another job with pay as desirable as that which claimant earned from the employer. Sharon's instruction to claimant that she was forbidden from raising her workplace concerns with the manager, Alex, or members of management other than herself, effectively forestalled claimant from seeking the intervention of others in authority. While, as the ALJ stated, claimant theoretically might have waited an indefinite period of time for Alex to return her October 16, 2014 call, there was absolutely no evidence in the record that claimant had prior interactions with Alex or that she had an objective basis to conclude that he was likely to assist her or that his approach would be any different from Sharon's and Nguyen's. Based on claimant's consistent dealings with Sharon and Nguyen, it was not unreasonable for her to conclude that Alex's delay in returning her phone call was caused by his unwillingness to intervene on her behalf. On this record, a reasonable and prudent person would have concluded that the impacts of Nguyen's and Sharon's behaviors, including the emotional harms and the economic harms from a threatened reduction in pay if she continued to object to her treatment, were sufficiently grave reasons to justify leaving work. Also on this record, a reasonable and prudent person would not have concluded, based on what claimant knew when she made the decision to quit, that there was any reasonable possibility that a further appeal to Alex or to some hypothetical member of the employer's management would have abated the situation.

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

DECISION: Hearing Decision 14-UI-31071 is set aside, as outlined above.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: February 17, 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 website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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