

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0297

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114654). Claimant filed a timely request for hearing. On February 23, 2016, ALJ M. Davis conducted a hearing at which the employer did not appear, and on February 25, 2016 issued Hearing Decision 16-UI-53798, affirming the Department's decision. On March 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB that contained new facts not presented during the hearing. Claimant did not explain why she was unable to offer this new information at the hearing, or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. For this reason, EAB did not consider the new facts that claimant sought to present in her written argument. EAB considered only information admitted into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Oregon Department of Justice employed claimant as a child support case manager from May 1, 2002 until November 30, 2015.

(2) Claimant had a poor working relationship with her lead worker. Claimant thought the lead worker was harassing and bullying her. On at least one occasion, the lead inquired of claimant if she had taken money from the office coffee fund. Another time, when claimant turned on the office air conditioning in the summer when the temperature in the office reached 80 degrees, the lead "yelled" at claimant and told her not to turn up the air conditioning because she was "the only one who was warm." Audio at ~19:06. Claimant perceived that the lead was discriminating against her because of her body weight.

(3) On occasion during the last few years of her employment, claimant complained to her manager about the lead worker. Claimant thought the lead worker was “the darling of management” and the employer’s management “protected” the lead because management appreciated the amount of supervisory work lead the lead assumed. Audio at ~22:15, ~22:42. After her complaints, claimant did not believe that the manager took adequate steps to resolve her difficulties with the lead. Claimant did not contact the employer’s human resources department about the lead because she did not want to “go a step above” her manager since she “liked” her manager. Audio at ~21:52.

(4) During her employment, claimant thought she did not have the skills to meet the employer’s performance expectations because she was an older worker and was not as familiar with computers and modern office equipment as younger workers. Claimant was sensitive to this perceived deficit and attributed her failure to meet the employer’s performance goals to it. When the employer addressed poor work performance with claimant, she believed it was a form of age discrimination.

(5) In approximately November 2014, the employer held an investigatory meeting with claimant about unsatisfactory work performance. As a result of that meeting, the employer issued a written reprimand to claimant. No further disciplinary steps were taken arising from that meeting.

(6) On November 25, 2015, the employer convened an investigatory meeting with claimant to inquire into whether she had improperly used the employer’s equipment by visiting a social network site for approximately four hours during a work day sometime in August 2015. Claimant denied she had done so. During that meeting, the employer also inquired into claimant’s performance. At the conclusion of the meeting, claimant asked one of the employer’s representatives, “What can I expect?” Audio at ~11:20. The representative shook her head, told claimant that the allegations about equipment misuse were very serious and that a decision whether to discipline her would be made in about two weeks. Audio at ~ 11:34.

(7) Claimant had November 26 and 27, 2015 off from work due to the Thanksgiving holiday and November 28 and 29, 2015 were weekend days that claimant also had off. On November 30, 2015, claimant resigned from work effective immediately.

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.

At the hearing, claimant provided many reasons why she decided to resign when she did. However, the relevant inquiry is whether the reason claimant actually left work was good cause for her to do so, and not the combined weight of all of claimant’s past concerns. Here, claimant testified she decided to leave

work as a result of “humiliation” she experienced during the November 25, 2015 meeting and because she thought discharge was the “inevitable” sanction that would be imposed as a result of that meeting. Audio at ~9:10, ~9:40, ~19:44, ~24:26. Claimant also clearly stated at hearing she would not have decided to leave work when she did except for the November 25, 2015 investigatory meeting. Audio at ~28:12. The proper focus of the inquiry into whether claimant had good cause to leave work is the substance of that meeting and claimant’s reaction to it.

While claimant might have felt “humiliated” or been distressed by the November 25, 2015 meeting, it is not unreasonable for an employer to investigate allegations of workplace misuse of its equipment or allegedly unsatisfactory work performance. While an investigation of this type would undoubtedly be upsetting to a long term employee such as claimant, it would not cause a reasonable and prudent person to conclude that it created a grave situation necessitating that she leave work. Claimant did not describe the meeting in such a way that the behavior of the employer’s representatives appeared abusive or to be a form of mistreatment. Audio at ~11:12. Although claimant stated she thought she was going to be discharged as a result of that meeting, she did not suggest that employer representatives told her that was a likely result, or that discharge was even one of the disciplinary sanctions that they were considering. Nor was it clear why, since claimant disputed the events underlying the allegation of equipment misuse, her conclusion that she was going to be discharged in the near future was reasonable. A reasonable and prudent person in claimant’s circumstances, exercising ordinary common sense, who disputed the current allegations of improper behavior in the workplace, would not have concluded that the employer was likely to find those allegations substantiated or that, if the employer did, she was likely to be discharged over the current allegations. Claimant did not meet her burden to show grave reasons compelled her to leave work when she did.

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

DECISION:

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, not participating.

DATE of Service: April 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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