

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0515

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 145722). Claimant filed a timely request for hearing. On April 21, 2016, ALJ L. Lee conducted a hearing, and on April 29, 2016, issued Hearing Decision 16-UI-58561, concluding that claimant voluntarily left work without good cause. On May 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lane County School District 19 (District) employed claimant as a part-time educational assistant from September 2, 2014 until February 5, 2016.

(2) On February 1, 2016, claimant reported for her assigned shift. The principal of the school where claimant worked was surprised to see claimant because he understood that the District human resources director had placed claimant on administrative leave due to attendance issues. Because claimant's arrival at the school was unexpected, claimant waited for approximately one hour while the principal made arrangements for claimant to perform her assigned duties. Claimant was upset by this wait.

(3) After claimant completed her shift on February 1, 2016, she and a union representative met with the District human resources director. The human resources director placed claimant on administrative leave for three days, from February 2 through 4, for attendance issues. Claimant understood that she was expected to return to work on February 5.

(4) On February 5, 2016, claimant called the District's automated attendance telephone line to report that she was ill and unable to work. Claimant then went to the school building where she worked to meet with the principal. During this meeting, claimant told the principal that she was quitting her job because she was upset about the treatment she had received when she reported for work on February 1. The principal told claimant she should submit a written resignation to the District human resources office. After her meeting with the principal, claimant left the school building. Although claimant had

been scheduled to meet on February 5 with the principal and the District human resources to discuss her complaints about the treatment she had received from the District, claimant never attended this meeting.

(5) On February 8, 2016, claimant sent an email to the human resources director, which she copied to the principal. In her email, claimant stated that she had not resigned her position, asserting that the principal told her not to return to work and asked that she submit a letter of resignation. Also in her email, claimant referred to complaints she had made about the treatment she had received from the District. After the human resources office received claimant's February 8 email, an administrative assistant attempted to contact claimant to schedule a meeting with the human resources director to discuss claimant's complaints. The administrative assistant left a message on claimant's telephone, but claimant never returned the call.

(6) Because claimant never reported for work after February 5, 2016, the District concluded that she had abandoned her job. On February 25, 2016, the District automatically deposited claimant's final paycheck into her bank account.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

The parties disagreed about the nature of claimant's work separation. Claimant insisted she never quit her job, while the District contended that she told the principal on February 5 that she was resigning. If an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant testified that at the February 5 meeting with the principal, she voiced complaints about the way the District had treated her, but repeatedly told the principal that she was not quitting her job. Claimant's credibility was seriously undercut by aspects of her hearing testimony, however. Claimant's explanations as to why she called the District attendance line to report her absence on February 5 were inconsistent. Claimant initially testified that her dissatisfaction with the treatment she received on February 1, when the principal made her wait an hour before she could begin performing her job duties, was the reason she called in sick on February 5. 4/21/16 (12 p.m.) Transcript at 18-19. She subsequently testified that she was sick because she "still had the same illness that I did before I got suspended." 4/21/16 (12 p.m.) Transcript at 20. In addition, claimant's explanation for going to work after reporting she would be absent on February 5 was implausible. Claimant asserted that she went to work even though she was ill because she wanted to perform her assigned duties. 4/21/16 (12 p.m.) Transcript at 23. If claimant was as committed to her job as she claimed, however, it made no sense for her to have called in her absence to the attendance line.

Concerning the principal's purported demand that she resign, claimant asserted in her February 8 email that the principal told her not to return to work and asked for her letter of resignation. 4/21/16 Transcript (9:30 a.m.) at 10. At the hearing, however, claimant never testified that the principal asked for her resignation during their February 5 meeting, and testified that although she went to the school building where she worked on February 8, she never spoke with the principal on that date. 4/21/16 (12 p.m.) Transcript at 29-30, 32. Because portions of claimant's testimony were either implausible or

contradictory, we doubt its accuracy. Where the evidence was in dispute, we therefore found facts in accordance with the employer's evidence.

On February 5, claimant told the principal she was resigning and never returned to work for the employer after that date. Claimant's statement and actions on that date indicated her unwillingness to continue working for the employer and her work separation is therefore a voluntary leaving. Although claimant may have attempted to rescind her resignation in her February 8 email, the District was not required to accept it.

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.

The only reason claimant gave for her decision to voluntarily leave work on February 5 was the treatment she received when she reported for work on February 1. Claimant was distressed when the principal was surprised by her presence on that date, and angered that she had to wait an hour before she was able to start working. 4/21/16 (9:30 a.m.) Transcript at 22. The awkward reception claimant received on February 1 was certainly upsetting to her, but did not constitute a grave situation that would cause a reasonable and prudent person to leave work. In addition, claimant had the alternative of pursuing complaints about her supervisor at the meeting scheduled with the principal and human resources director on February 5. Claimant resigned, however, and never attended this meeting. A reasonable and prudent person of normal sensitivity, who was upset by her supervisor's treatment, would have attempted to resolve these issues before quitting her job. Claimant therefore failed to demonstrate good cause for voluntarily leaving work. She is disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 16-UI-58561 is affirmed.

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

DATE of Service: June 6, 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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