

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0557

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83612). Claimant filed a timely request for hearing. On April 20, 2016, ALJ Triana conducted a hearing, and on April 25, 2016, issued Hearing Decision 16-UI-58096, affirming the Department's decision. On May 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on the record. Claimant's written argument contained additional information, but failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) GBMO LLC, a Burger King franchisee, employed claimant, last as an assistant manager, from April 14, 2013 to February 29, 2016.

(2) On December 1, 2015, the manager of the restaurant where claimant worked went on maternity leave and claimant became the acting manager. The manager was scheduled to return to work from her maternity leave on March 1, 2016.

(3) Between December 1, 2015 and February 1, 2016, claimant had to address a number of restaurant problems as acting manager. The equipment often broke down, causing customers to complain about delays, and decreasing the restaurant's "drive-thru" efficiency, which claimant had to address with the employer. Right around Christmas, the employer inadvertently and mistakenly deducted some insurance premiums from employee paychecks and they angrily complained to claimant as acting manager. Claimant also believed the employer failed to hire sufficient shift leaders, which caused her hours to increase without any increase in pay because she was a salaried employee. Claimant became increasingly frustrated with the employer for all these reasons.

(4) On February 3, 2016, claimant received an email from the district manager which was addressed to all the district's restaurant managers and was from the employer's owner. The owner had notified them that a restaurant manager had been terminated that day because the manager's restaurant had, among other criticisms, been charged with four food safety violations, including serving undercooked beef, and that the owner would not tolerate "such low and lazy performances." Exhibit 1. The owner ended the email by stating, "whoever that is not willing to keep up this effort [to reach a top ten ranking as an operator by August] has no place in our company." Exhibit 1. The district manager ended his email to his managers by stating, "make sure...you read this and acknowledge your understanding to [the owner] and me. GBMO will not tolerate poor performance." Exhibit 1.

(5) The following day, claimant spoke with the district manager, in part, because she had not acknowledged receiving the email. Claimant objected to doing so because she believed the restaurant could fail an inspection because of faulty and inadequate freezers and other equipment, and because she was not the restaurant's manager. Nonetheless, the district manager directed claimant to acknowledge the email and the possibility she could be terminated for a bad inspection. Claimant reluctantly did so.

(6) Claimant considered the requirement for her to acknowledge the email and the possibility she could be terminated for a bad inspection as an unfair threat and the "breaking point," because she was not the manager, was not being paid as the manager, and the restaurant's operations were limited by faulty equipment. Audio Record ~ 13:00 to 16:00. On February 6, 2016, claimant gave the employer three weeks' written notice of her intention to quit on February 29, 2016 for those reasons. Exhibit 1.

(7) Between February 6 and February 29, 2016, the employer sent a manager from another restaurant to assist claimant and oversee correcting some equipment problems. After observing claimant competently perform her work duties, he encouraged her to stay with the restaurant as assistant manager rather than resign. Claimant offered to stay if she was allowed to step down to the hourly position of shift leader. However, the district manager declined that offer.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time.

In written argument, claimant objected to the ALJ focusing on the employer's February 3 email for purposes of her good cause analysis and contended that the email was "not the only reason I gave my notice . . ." Written Argument at 1. However, claimant testified that the email was the "breaking point" for her decision to give her quit notice when she did. Thus, it was the employer's email, and not her other concerns, that triggered claimant's decision to give notice on February 6, 2016. Accordingly, that

was the proximate cause of claimant's decision to quit work, and the proper focus of the good cause analysis.

Claimant failed to meet her burden to show a reasonable and prudent assistant restaurant manager of normal sensitivity, exercising ordinary common sense and knowing that the restaurant's manager would return on March 1 and be saddled with the responsibility to meet the employer's safety and efficiency expectations set forth in the email, would have concluded her circumstances were so grave that she had no reasonable alternative but to quit work, effective the day before the manager's return. By the time claimant quit work, the employer had begun to address the equipment problems, asked for her to rescind her resignation and remain at work in a position that would not subject her to penalties for poor restaurant performance, and her duties filling in for the manager who was on leave were nearly at an end. At minimum, a reasonable and prudent assistant manager who was interested in remaining employed, knowing that the restaurant's equipment problems were being addressed and additional help would return on March 1, would have accepted the employer's apparent offer to allow her to continue her employment as an assistant manager and waited to see if the employer continued to address her concerns, and conditions continued to improve, before quitting work.

Claimant did not have good cause to quit work when she did and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 16-UI-58096 is affirmed.

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

DATE of Service: June 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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