

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0572

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 75858). Claimant filed a timely request for hearing. On April 26, 2016, ALJ Monroe conducted a hearing, and on May 5, 2016, issued Hearing Decision 16-UI-59016, affirming the administrative decision. On May 13, 2016, claimant filed an application for review with the Employment Appeals Board.

FINDINGS OF FACT: (1) Blackbird Wineshop employed claimant from May 1 or 5, 2014 until February 11, 2016, last as manager of the cheese department.

(2) The employer's owner allowed claimant to store catering equipment in the back room of his store. Claimant used this equipment in her personal catering business, and also used it to prepare food for events held in the employer's store. Claimant was unable to afford the cost of storing this equipment in a commercial facility.

(3) In December 2015, the employer's owner held a staff meeting at which employees discussed future plans for the store. Claimant and the owner disagreed about ideas for expanding the employer's business. Their discussion became very heated and claimant became upset by the owner's tone of voice. Claimant burst into tears and walked out of the meeting.

(4) In January 2016, the employer's owner learned that claimant and another employee, E,¹ had put a posting about the store that included a picture of a headless Buddha statue, which was kept in the store's bathroom, with the following caption: "Come to the [employer's store] if you're looking for a little head." 4/27/16 Hearing Transcript at 6-7. The posting angered the employer, who believed the post was offensive and potentially damaging to the store's reputation. He texted the claimant and the employee who had posted the picture, instructing them to immediately remove the posting and to tell him when they had done so. When the employer heard nothing from the employees, he went to the store and

¹ E is a pseudonym.

angrily confronted claimant and E about the posting. The employer yelled at claimant and E, and used foul language. Claimant told the owner to calm down because there were customers in the store; the employer then stopped yelling, and began talking calmly with the customers about what had occurred. The owner subsequently discussed this incident with E and they apologized to one another. The owner did not discuss the incident with claimant, however, because he felt there had been a breakdown in their communication. 4/27/16 Hearing Transcript at 9-10.

(5) On February 11, 2016, while working in the back room of the employer's store, E accidentally knocked over several boards; the boards hit E in the back. Claimant, who was working in the front retail area of the store, heard the boards fall and went to the back room to check on E. The owner, who was occupied with other matters, remained in the front retail area. When claimant and E left the back room and entered the front retail area, the owner jokingly remarked "that's what insurance is for." 4/26/16 Hearing Transcript at 6. E and the owner had the type of relationship in which they felt comfortable joking with one another. Claimant told the owner that he needed to remove the boards from the back room; the owner asked her what boards she was referring to. The owner then told claimant that he had "plans" for the back room, and that she needed to remove her catering equipment. Claimant told the owner that he should let her know when he wanted her to remove the equipment, because she would then "put in my two weeks." 4/26/16 Hearing Transcript at 7. The owner and claimant angrily discussed claimant's equipment and her work for the employer; the owner told claimant he was accepting two weeks' notice of her resignation. Although upset by this discussion, claimant attempted to continue working, but was too distressed to do so. Claimant left the workplace and never returned to work for the employer. Claimant quit her job because she believed the owner treated her and other employees abusively.

CONCLUSION AND REASONS: We agree with the ALJ, and conclude that 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.

Claimant quit her job because she believed that the owner treated her and other employees abusively. At the hearing, claimant listed numerous complaints about the owner, but focused on three incidents as the primary examples of the owner's behavior she considered abusive – her heated discussion with the owner about business development in December 2015, the owner's angry disapproval of a social media posting in January 2016, and her argument with the owner that caused claimant to walk off the job in February 2016. Claimant did not demonstrate that the owner's behavior on these occasions was abusive, created an objectively oppressive work environment for her or other employees, or constituted mistreatment that would cause a reasonable person to conclude that the only alternative was to voluntarily leave work. *See e.g., McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381

(1979) (claimants are not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation [by quitting] will disqualify the worker from unemployment benefits). In regard to the two final incidents, the owner’s distress over an offensive social media posting that could potentially have damaged his store’s reputation was understandable, and his request that claimant to remove her equipment from his back room was reasonable.

Even if the owner’s conduct constituted a situation of gravity for claimant, she had the reasonable alternative of talking with the owner about his behavior at a time when she and he were not engaged in some type of angry dispute. When the ALJ asked claimant if she ever expressed concerns to the owner about how he was interacting with her, claimant responded that she “confronted” the owner about his behavior at the time he reacted angrily to the social media posting. 4/26/16 Hearing Transcript at 22-24. Claimant provided no evidence of any attempt to talk with the owner about his conduct at a time when neither she nor he was upset, however. A reasonable and prudent person would have tried to discuss her concerns with the owner at an appropriate time before quitting her job.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-59016 is affirmed.

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

DATE of Service: June 16, 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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