

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0847

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72012). Claimant filed a timely request for hearing. On July 1, 2016, ALJ Monroe conducted a hearing at which the employer did not appear, and on July 8, 2016 issued Hearing Decision 16-UI-63449, affirming the Department's decision. On July 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she offered new information not presented during the hearing. Claimant did not explain why she was unable to offer this information during 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 information that claimant sought to present.

In Hearing Decision 16-UI-63449, the ALJ erroneously stated that no exhibits were offered or admitted into evidence. However, claimant offered Exhibit 1 into evidence and the ALJ marked it and admitted it. Audio at ~5:44. Hearing Decision 16-UI-63449 is hereby corrected to reflect the admission of Exhibit 1 into the hearing record.

FINDINGS OF FACTS: (1) Red Lion Inn Corporation employed claimant as director of sales from February 23, 2015 until May 13, 2016.

(2) Claimant found it increasingly difficult to work with the employer's general manager as time passed. The general manager sometimes yelled at claimant and other employees, treated claimant and other employees in a condescending manner, was critical of them and undercut their efforts to perform their jobs.

(3) Sometime during fall 2015, the general manager instructed claimant, who was a member of management, to assist the housekeeping staff in stripping beds and cleaning rooms. Because the deadline was approaching for claimant to submit a project to the corporate director of sales, claimant notified the corporate director that she was unable to meet that deadline. The corporate director contacted claimant and when the corporate director asked, claimant told her that she was unable to meet the project deadline because the general manager had assigned her to assist in housekeeping. The corporate director told claimant she should not be assisting in operations. The corporate director then contacted the general manager's supervisor and claimant was relieved of assisting the housekeeping department. After this incident, the general manager thought claimant was not a "team player." Audio at ~14:46. The general manager's behavior toward claimant became increasingly oppositional, and in front of other employees at meetings, the general manager would list tasks that needed to be performed and then address claimant and make sarcastic comments like, "I can't ask you to do this because it's not in your job description." Audio at ~16:14. The general manager's sarcasm and condescension toward claimant became progressively worse over time.

(4) On another occasion, the front desk made a mistake about a booking that was not attributable to claimant or the sales department in which claimant worked. The general manager insisted that the sales department was the source of the error. The comments the general manager made to claimant and her behavior greatly upset claimant and claimant's administrative assistant. Claimant went to the general manager, explained her and her assistant's reaction to what the general manager had said and asked the general manager to stop speaking to them in the manner that she had. The general manager responded, "I didn't mean it that way." Audio at ~17:25. However, despite the general manager's statement, she continued to berate and upset claimant and other employees.

(5) On another occasion, the general manager instructed claimant to send an email to the front desk requesting that an additional report be produced as one of the daily reports they ran. Claimant sent the email, which was a polite request of the front desk. Shortly after, the general manager sent claimant an email asking her to see the general manager about the email she sent to the front desk. When claimant did so, the general manager told her, "You didn't have to be so bossy," and said that the front desk employee who received her email had interpreted it as such. Audio at ~21:41. Later, claimant apologized to that front desk employee, who told her he had not been offended by the email and had not complained about it to anyone. Claimant thought the general manager had misrepresented the employee's reaction to the email to "get me for whatever reason." Audio at ~22:20. Another time, claimant received an urgent email from a front desk employee. When claimant was finally able to reach the employee, the employee described how the general manager had "freaked out" at her to such an extent that the employee needed to leave the front desk and was reduced to tears in the restroom. Audio at ~24:58. The employee then stated that the general manager had later apologized and bought her a cup of coffee. Claimant concluded that the general manager's apology was not sincere. Despite her apology, the general manager continued to deal with employees in a berating and condescending manner.

(6) Sometime in January 2016, claimant returned to work after having hand surgery. One day, claimant was taking urns of coffee to a conference room because the guests had ordered full day coffee service. Because claimant's hand was still recovering, claimant could not carry more than one urn at a time to the conference room. The general manager was aware that claimant was taking the urns to the conference room. When claimant completed the coffee service, she walked by the general manager's

office, she stated she had carried the urns to the conference room although it had taken her three trips. The general manager responded, "Don't be a martyr." Audio at ~20:00. Since claimant had not intended to make a point of her injury, she concluded the general manager had only wanted to criticize and belittle her.

(7) As a result of the general manager's behavior and her treatment of employees, five employees who worked at the front desk left employment between fall 2015 and April 2016. They were unable to tolerate the general manager's behavior. The employer's chief engineer had also left employment earlier due to the cumulative effects of the general manager's yelling at him in front of other employees and telling him that he did not know how to perform his job.

(8) As of approximately January 2016, the general manager's consistent behavior had taken a toll and caused claimant to "feel terrible" about work. Audio at ~28:25. Claimant was "sick to [her] stomach" when she was at work and made appointments to see her physician for all manner of problems that she attributed to workplace stress. Audio at ~36:45. The stress claimant experienced at work affected her home life and her relationship with her husband. Claimant would go home and often cry over her unhappiness in the workplace and her inability to change the behavior of the general manager.

(9) During her employment, claimant spoke several times to the general manager about her behavior, but nothing changed and the general manager's offensive behavior continued. Claimant did not complain about the general manager to the employer's human resources representative in the workplace because the representative was the general manager's "best buddy" and her "right hand." Audio at ~34:36. Claimant was afraid that what she said would get back to the general manager, and from what claimant observed happening to other employees who complained about the general manager, the general manager's treatment of them became much worse after they made the complaint. Sometime in approximately January 2016, claimant contacted the corporate director of sales about the general manager, but the corporate director did not know what she could do other than contact the general manager and claimant asked her not to do that. Claimant was not aware of any other recourse she had to address the general manager's behavior other than the steps she took.

(10) Claimant voluntarily left work on May 13, 2016. Claimant could no longer tolerate the general manager's behavior, it was affecting her health and she concluded it was not going to change.

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.

In Hearing Decision 16-UI-63449, the ALJ concluded claimant voluntarily left work without good cause. The ALJ reasoned that "while the general manager may have been very difficult to work with,

claimant's testimony did not establish that the manager's treatment of her, viewed objectively, was so oppressive as to create a hostile work environment **** While claimant may have made a good personal decision in choosing to leave the position, she failed to demonstrate that no reasonable and prudent person would have continued working for the employer after May 13, 2016." Hearing Decision 16-UI-63449 at 2. We disagree.

While we agree with the ALJ no single incident claimant described at hearing demonstrated that the general manager's behavior was abusive or oppressive to her, the issue is whether the cumulative impact of the general manager's ongoing behavior was such that a reasonable and prudent person would not have continued working, knowing that those circumstances were not likely to change. In this case, there was unrefuted evidence that several employees who worked for the employer at the same time as claimant thought the working conditions the general manager created were sufficiently grave that they left work. Their departure strongly suggests that claimant's reaction to the general manager's behavior, and her decision to leave work, was likely not the result of her unusual, unique subjective sensitivities but were reactions shared by many others in the workplace. As well, the evidence was unrefuted that the general manager treated claimant consistently poorly, and that claimant became sick as a result of that treatment, and went to the doctor repeatedly for treatment of illness. In addition, claimant's home life was significantly and negatively affected and she cried regularly over the general manager's treatment of her. Indeed, the strong emotion that claimant exhibited during the hearing about her decision to leave work suggests that the work environment created by the general manager constituted a grave situation for her, and combined with the departures of many other employees corroborates that claimant's reaction to the work environment she described was that of a reasonable and prudent person. Audio at ~46:43. Given claimant's reactions to it, claimant demonstrated that the work environment created by the general manager was a grave circumstance.

Given that claimant's situation was grave, it appears that there were no reasonable alternatives to her quitting work. Claimant's testimony that she repeatedly confronted the general manager about her behavior and nothing changed was unrefuted. The one comment about the general manager that claimant made to a member of upper management, the corporate director of sales, was communicated to the general manager, which resulted in claimant being the recipient of even worse treatment by the general manager. Under the unrefuted circumstances as described by claimant, it was unreasonable to expect her to complain to the on-site human resources representative about the general manager because the representative was a very good friend of the general manager and was unlikely to do anything to sanction the general manager or to try to temper her behavior. Rather, it was not unreasonable for claimant to conclude that a complaint to the human resources representative would likely be conveyed to the general manager and would result in her being subjected to even worse treatment by the general manager. As well, claimant was very definitive that the employer's hierarchy was "really not well-defined" and she was not aware of any avenues other than those she took that might address the general manager's behavior. Audio ~32:34, ~34:20, ~41:50. On this record, it does not appear there were any reasonable alternatives to claimant's leaving work that would have mitigated the grave situation to which her work environment exposed her.

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

DECISION: Hearing Decision 16-UI-63449 is set aside, as outlined above.

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

DATE of Service: August 31, 2016

NOTE: This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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