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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0850

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 31, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75430). Claimant filed a timely request for hearing. On June 22, 2016, June 29, 2016 and July 1, 2016, ALJ Vincent conducted a hearing, and on July 6, 2016 issued Hearing Decision 16-UI-63221, affirming the Department's decision. On July 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision, to the extent it was based on the hearing record.

FINDINGS OF FACT: (1) Seaport Airlines, Inc. employed claimant as a pilot and director of information technology from March 3, 2015 to January 28, 2016.

(2) In November 2015, claimant detected a virus that had infected computers on the employer's network. Over the following months, claimant continued to uncover the extent to which the virus had affected the employer's network and communicated with the employer's then-president about the issue.

(3) Claimant had a contentious relationship with a coworker who made decisions claimant felt affected his information technology work, some of which were inconsistent with claimant's research and advice. In early January 2016, claimant disagreed with a decision his coworker made, told her and management that she lacked sufficient foundational knowledge to have made a good decision without heeding claimant's advice, and complained to management that his coworker was "out of line," "intentionally keeping me out of the loop," and engaging in unprofessional and "childish behavior." Exhibit 1 at S. Rather than reprimanding claimant's coworker or accepting claimant's recommendations, management notified claimant that management had agreed with his coworker's decision and, on January 19, 2016, told claimant to "[p]lease gear down a notch" because the coworker "is not out to get you." *Id.*

(4) On January 20, 2016, claimant emailed the then-president about the computer virus and his conclusion that there had been a security breach. Claimant reported that their security vendor was at

fault for the breach, but that the employer had a legal obligation to notify its consumers of any breach. On January 26, 2016, claimant sent a summary of the issue to the incoming president in which he stated that consumer data had "[l]ikely been compromised," that the employer was legally required to notify consumers of the data breach, that "an appropriate investigation or consultation with relevant federal, state or local agencies responsible for law enforcement, to determine the potential breech" was necessary, and that, because the employer did not have sufficient resources to investigate "to determine the level of loss here," the employer should contact an attorney to "guide us in the appropriate steps." Exhibit 1 at J. Based on claimant's recommendations, the employer hired a consultant to review the potential data breach.

(5) On January 26, 2016, claimant exchanged emails with another coworker about managing the servers at a data center. Claimant suggested to the coworker that she was not qualified to manage the servers. Claimant's coworker became upset, confronted claimant, said he was "an asshole and a sexist" and had a problem working with women, and, when claimant smiled, told him to "wipe the smirk off my face." Exhibit 1 at Y. Claimant then told his coworker that she was "an idiot and a drama queen" and to "get out of my office." *Id.*

(6) After the coworker left, claimant sent an email to the employer's management reporting that his coworker "just came storming into my office, yelling at me about a perceived slight in an email sent earlier today. Slamming doors and approaching me in a threating [*sic*] manner. Her behavior was unprofessional and threatening. I would like to put a complaint on record of her behavior. It doesn't need to go any further if she would like to apologize." *Id.*

(7) Later the same day, claimant received an email from his coworker's husband titled "Your personality" that stated,

> Just to expand on the events of the day…. Yes your [*sic*] asshole, EVERYBODY thinks and knows your [*sic*] an asshole. Advice, no need to keep admitting it. Keep fucking around and you'll be [*sic*] regret it.

Exhibit 1 at X. Claimant immediately forwarded the email to the employer's management and asked how they would like him to handle it, then informed the Vancouver police department that his coworker's husband had threatened him.

(8) Later the same day the employer's incoming president sent an email to claimant stating, "I know it's been a tough day. Let's get together tomorrow afternoon." Exhibit 1 at V. Claimant replied in which he stated that had "never been thanked or acknowledged for my efforts," spent his own money to improve morale at the company, did not complain, and "have come under attack for just trying to help out the company." *Id*. Claimant further wrote, " If ever there was a hostile environment this is it. So now tell me why I should continue to support [the employer] given recent events." *Id.*

(9) On January 27, 2016, claimant emailed an incident report about the previous day's events to the employer's management. Claimant said in the email that he was "concerned for my safety" because of the threat in his coworker's husband's email. Exhibit 1 at Y.

(10) On January 28, 2016, claimant and the executive vice president met to discuss the previous days' events. During the meeting, the vice president told claimant with respect to his interaction with the coworker that he was "out of line" and should not treat other employees the way he had. Audio recording at ~9:45. Claimant felt that he was a "model" employee, thought his behavior with his coworker on January 26th had been "entirely appropriate," and thought he had done nothing wrong. *Id.* at ~9:15. Claimant thought the vice president's statements were "completely unreasonable and unexpected." *Id.* at ~9:45. Claimant then quit work, effective immediately.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

Claimant testified that he quit work in part because of the employer's decisions with respect to the computer virus he identified and investigated between November and January 2016. Claimant argued that the employer's failure to notify its consumers of the breach violated state law, and put him at risk for personal liability for any consequences of the breach, but did not establish good cause to quit work for that reason. First, in claimant's January 26th email to the incoming president, he stated that he had concluded that it was "[l]ikely" the employer's data was compromised and that he was "100% certain" that there was a data breach, but he did not notify the employer what had been breached, or when, or what portion(s) of the employer's data were affected. Given those circumstances, the record fails to show that a state law violation occurred. Nor was it unreasonable that the employer did not immediately respond to claimant's report by notifying consumers that an actual breach had occurred. Nor, given the circumstances, does the employer's actual response, hiring a consultant to investigate the issue further, appear unreasonable. Second, although claimant first identified the virus on the employer's network in November 2015, according to the documentation claimant provided for the hearing, he first notified the employer of the data breach and his opinion that the employer needed to notify its consumers of the breach on January 20th, and first notified the incoming president on January 26th, only two days before quitting work.

Considering the totality of the evidence, claimant had the reasonable alternative of allowing the employer sufficient time hire a consultant and to investigate the effect of the virus on the employer's data security before concluding that he had to quit work over the employer's inaction. Notably, claimant's January 26th email to the incoming president advised that the employer did "not have the resources to do the appropriate investigation to determine the level of loss here," recommended the employer consult with an attorney about the matter, and suggested the possibility that the attorney might advise the employer "to do nothing." Exhibit 1 at J. Given the short period of time that had passed, claimant's uncertainty that the employer would be advised to notify consumers of the breach, and the

fact that the employer was, in essence, following claimant's advice with respect to hiring a consultant, claimant did not establish that his circumstances with respect to the virus and possible data breach were so grave that he had no reasonable alternative but to leave work immediately.

Claimant also testified at the hearing that he quit work in part because of the hostile environment he perceived based upon his coworkers' behavior. Claimant alluded to two specific instances with respect to the allegation, including his perception that one coworker had deliberately excluded him from decisions pertinent to his work and behaved in a "childish" manner toward him, and his interaction with another coworker that culminated in threats or threatening behavior from the coworker and her husband.

With respect to the coworker excluding claimant from decisions, the perceptions of the parties differed as to whether or not those decisions would, or were likely to, affect claimant's work. It appears, however, that claimant was primarily dissatisfied with the coworker's decisions, endorsed by the employer's incoming president, that differed from claimant's recommended courses of action. Although claimant was, understandably, frustrated by the situation, the employer had the right to make decisions without claimant's input, or contrary to claimant's recommendations. Claimant did not establish that the employer's choice to make business decisions potentially impacting him without his input or against his advice constituted a grave situation. Nor did claimant's suggestion that his coworker was ill-equipped to make decisions about the matters under her purview, had intentionally left claimant out of the decision-making process and was behaving in a childish manner make the situation so grave that any reasonable and prudent person would have concluded he had no choice but to quit work over it.

With respect to the threats posed by claimant's other coworker and her husband, claimant also did not establish that the situation was so grave he had no reasonable alternative but to quit work when he did. Claimant alleged he was a "model" employee and that his behavior toward his coworker on January 26th was "entirely appropriate." However, claimant's "incident report" shows that he smiled or made light of a visibly agitated and irate coworker's concerns that he was engaging in sexist behavior then called her an "idiot" and a "drama queen." While claimant's coworker is certainly at fault for her own inappropriate behavior in angrily confronting claimant and calling him an "asshole," claimant's responses appear to have been inflammatory rather than "entirely appropriate." Furthermore, although claimant indicated at the hearing and in his incident report that the employee was "threatening" him during the incident, he did not testify that she uttered an oral threat to harm him physically or professionally, and the only description of a threat was that she approached him and "wagged her finger at me." *See* Exhibit 1 at Y. The record fails to show what type of threat claimant believed his coworker posed or substantiate claimant's claim that any threat she might have posed was a grave situation for him.

The coworker's husband's email, likewise, did not specify a threat of physical or professional harm. Given the context of the email, however, the phrase "Keep fucking around and you'll be [*sic*] regret it" could reasonably be perceived as a threat that the author would take action to make claimant "regret" something if claimant committed another perceived transgression against his coworker. At the time claimant quit, however, he had reported the perceived threat to police and the employer. Although the employer had not sided with claimant with respect to his complaint about the coworker herself, the record fails to show that the employer did not respond or intended to ignore the perceived threat from her husband, nor does it appear on this record that claimant specifically asked either the then-president or the incoming president how the employer intended to respond to it before deciding to quit work.

Notably, at the time claimant quit work, only one full business day had passed since the perceived threat had occurred. Given the circumstances, it would not have been unreasonable for claimant to have specifically addressed the threat with the then-president or incoming president, asked them how they intended to handle the issue, and given them a reasonable amount of time to address the problem before concluding he had no reasonable alternative but to resign.

Claimant was clearly frustrated with a variety of his working conditions, including his relationships with coworkers, the employer's disregard of claimant's recommendations with respect to information technology decisions he believed would affect his work and the potential data breach, as well as the employer's failure to address the perceived threat posed by his coworker's husband's threat to his satisfaction. For the foregoing reasons, however, we conclude that claimant did not establish that any of those matters, considered individually or in the aggregate, constituted good cause for voluntarily leaving work when he did. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-63221 is affirmed.

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

DATE of Service: August 10, 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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