

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0986

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90701). Claimant filed a timely request for hearing. On August 2, 2016, ALJ Vincent conducted a hearing, and on August 10, 2016, issued Hearing Decision 16-UI-65398, affirming the Department's decision. On August 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: At the August 2, 2016 hearing, the ALJ identified and admitted a packet of documents submitted by claimant as Exhibit 1 (Audio Record ~ 3:00 to 9:45), a packet of documents submitted by the employer as Exhibit 2 (Audio Record ~ 9:45 to 12:25) and a second packet of documents submitted by the employer as Exhibit 3 (Audio Record ~ 12:25 to 13:25). In the hearing decision, however, the ALJ stated that only Exhibits 1 and 2 were admitted and none of the exhibits as identified and admitted by the ALJ were marked, which appear to be clerical oversights. Accordingly, we have identified the exhibits based on the ALJ's description of them, marked them as Exhibit 1, Exhibit 2 and Exhibit 3 respectively.

Claimant's written argument contained information that was not offered into evidence during the hearing, did not explain why she was unable to present the information at that time 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. She also failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Accordingly, under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090, EAB only considered the hearing record and the employer's written argument when reaching this decision.

Pursuant to ORS 657.275(2), EAB performed a *de novo* review of the entire hearing record, including the exhibits and the employer's written argument.

FINDINGS OF FACT: (1) Capers Café and Catering Co. employed claimant as an accounting and administrative assistant from January 4, 2010 to April 24, 2016.

(2) Over the last two years of claimant's employment, claimant found it increasingly stressful and unpleasant to work with an employer owner, AJ, as she was frequently criticized by and accumulated write-ups from AJ regarding mistakes she was making at work that made her feel she "wasn't worthy of [her] job." Transcript at 35. For example, in March 2016, AJ criticized claimant after a consultant concluded claimant had been tardy in completing accounting reports and claimant twice failed to attend a webinar that AJ had required her to attend. In early April 2016, AJ raised her voice at claimant because she believed claimant had mistakenly sent a profit and loss report to a banker, which claimant had not done.

(3) On Friday, April 22, 2016, near the end of the day, AJ criticized claimant after she discovered that claimant had been failing to place copies of employee time-off (PTO) request forms in employee files as had been the employer's procedure for years. Claimant admitted to AJ she "just stopped doing the procedure." Transcript at 29. AJ became upset and accused claimant of changing procedures without authorization, at which time AJ "got blown up at [by claimant] and...chose to leave the office." Transcript at 30. AJ then sent an email to claimant from her phone reiterating the importance of claimant following established procedures in her job so that the employer could rely on her records. In it she stated, "As you know, there is a lack of trust that your numbers are correct from the owners and the question today about PTO brings up the question again if your records are correct. It is one thing to make mistakes but another when set procedures are just stopped...please note that you are not authorized to stop or change procedures until thoroughly discussing it with me." Exhibit 3. After reading the email, claimant concluded "I can't take this anymore. I'm done." Transcript at 10.

(4) On Sunday, April 24, 2016, claimant resigned by sending AJ the following letter:

I have decided that working for Caper's is no longer an option for me. The working environment there with you has been caustic and unpleasant for some time. I'm human and I will make mistakes, with that being said, I don't need or want to work for someone who constantly berates me for the work that I do. I've just had enough and I feel for my health and wellbeing, including my sanity, that this is the only choice that makes sense.

Exhibit 1.

(5) Claimant's medical provider did not recommend to claimant that she quit her job.

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 would have continued to work for the employer for an additional period of time.

In her resignation letter, claimant told AJ that she was quitting because she considered the working environment with AJ “caustic and unpleasant,” did not want to work for someone who “constantly berates” her for mistakes, and needed to do so “for [her] health and wellbeing.” At hearing, claimant testified that it was “the overall dynamics of everything that went on...Not just what went on with me, but everybody else. It was a constant coming in the office huffing and puffing about somebody talking in the kitchen or somebody eating too many potato chips. It was always something with her. It was nerve wracking...I was at the end of my rope with all of it. And, yes, I made mistakes and therefore the write-ups. But...she just made me feel all the time like I wasn’t worthy of my job.” *Id.* Transcript at 35.

Personal abuse at work can, under some circumstances, amount to good cause to quit a job. See *McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants 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 will disqualify the worker from unemployment benefits”); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (regular fits of temper and verbal abuse); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management’s ageist comments and attitudes). However on this record, claimant failed to meet her burden to show that the owners’ treatment of her rose to the level of “personal abuse.” She described her superiors as demanding, volatile and temperamental individuals, particularly AJ, who occasionally implied to claimant that she was incompetent or raised her voice against claimant or other employees. Exhibit 1. However, she also described how AJ occasionally told her that she was a valued employee whom she had faith in. *Id.* Although the work environment may have been “caustic and unpleasant” claimant failed to establish that it was personally abusive to the extent it gave her good cause to quit.

Claimant also referenced the write-ups she received as berating and making her feel as if she was “walking on eggshells around the office.” Exhibit 1. However, the March 15, 2016 “Follow-up” to a February 2016 counseling notice was stern but not disrespectful or berating and essentially emphasized the importance of claimant responding to AJ’s work requests so that she could have confidence that a requested task was performed. *Id.* Nor was the April 22, 2016 email that caused claimant to conclude “I’m done” and resign two days later on its face, disrespectful or derogatory. *Id.* It emphasized the importance of claimant following office procedures so that the owners could trust her records. AJ added that the issue was not about claimant making mistakes, which claimant did not dispute, but about “when set procedures are just stopped” and she cited several examples of claimant having done so in the past.

Finally, claimant stated in her resignation letter that she was quitting, in part, to protect her “health and well-being.” However, the letter from her medical provider, dated more than two months after she quit, did not indicate that she had recommended to claimant that she quit her job and implied that claimant’s

stress was as much over the possibility she might lose her job over her work performance as over any stress she was experiencing from the owners. Exhibit 1. Nor did claimant dispute AJ's testimony that claimant never told her that the work environment or AJ's volatile behavior and criticism was so stressful to her that it might cause her to quit. Transcript at 26. Claimant failed to show that no reasonable and prudent person in her circumstances would have at least attempted to minimize future mistakes of the kind for which she had been criticized, or openly communicated to AJ the negative effect her temperamental behavior was having on her health, and continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from the receipt of unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 16-UI-65398 is affirmed.

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

DATE of Service: October 17, 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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