

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1136

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 31, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 74354). Claimant filed a timely request for hearing. On September 30, 2016, ALJ Shoemake conducted a hearing, and on October 4, 2016, issued Hearing Decision 16-UI-68563, affirming the administrative decision. On October 6, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant 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) From April 4, 2014 until July 15, 2016, Meygoo employed claimant as an executive chef in its catering operation. The employer's owner and general manager supervised claimant's work.

(2) On April 18, 2016, claimant and the general manager met to discuss a large event which the employer had catered. The general manager reprimanded claimant for failing to clean up product that had been spilled by chefs who had worked at the event. Claimant felt "piled upon" and disrespected by the general manager's reprimand. Because he was upset with the general manager's reprimand, he told the general manager she should just do what she wanted to do when she asked claimant about some menu options. Audio recording at 17:37. Sometime later in the day, the owner told claimant that he believed claimant had been abusive to the general manager, a remark that upset claimant. Audio recording at 19:97. The owner subsequently told claimant that he had selected the wrong word to describe the general manager's reaction to claimant's statements, and that the general manager actually felt "dismissed" or "unsupported" by what claimant had said. Audio recording at 30:25. Claimant, who was still upset that he had been told he was abusive to the general manager, asked for a meeting so they could "work this out." Audio recording at 20:29. The owner scheduled a meeting for April 19, 2016. On April 19, no meeting occurred during claimant's work shift. As the employer was leaving the

workplace, claimant asked him about the meeting. The owner, who was very busy, felt “harassed” by claimant’s meeting request and left. Audio recording at 32:20.

(3) On July 1, 2016, the owner asked that claimant make a batch of Greek dressing. Claimant believed that there was no need to make the dressing, tried to tell the owner why additional Greek dressing was unnecessary, and began to walk away. The owner put up his hand to stop claimant from leaving, and told claimant to stop, listen to him, and make the dressing. Audio recording at 29:44, 44:23.

(4) On July 2, 2016, claimant reported to work at 6:30 a.m. to prepare food for an event. The owner arrived at approximately 8 a.m. to prepare a dish for the event. Claimant told the owner that he was behind in his work and needed some help. The owner did not respond to claimant, and finished his work. The owner then prepared himself a cup of coffee and left. Audio recording at 10:48. After this incident, claimant spoke to the general manager, both by phone and in person, about his frustrations and his need for help, and indicated that he might quit his job. The general manager asked claimant if he wanted her to talk to the owner, and claimant responded it was up to the general manager. Audio recording at 14:29. Claimant did not ask the general manager to intervene because he wanted to quit, rather than attempt to resolve the problems he was experiencing with the owner. Audio recording at 15:25.

(5) Also on July 2, 2016, claimant left the owner a letter in which he indicated that he was voluntarily leaving his job, effective July 15, 2016. Claimant quit his job because he believed the owner had treated him disrespectfully.

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 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 voluntarily left work for the employer because he believed the owner treated him disrespectfully. Although claimant testified that the owner behaved inappropriately on April 16, 2016, by wrongfully accusing claimant of behaving abusively toward the general manager and refusing claimant’s request to meet about this accusation, claimant did not leave work until July 2, 2016. The owner’s behavior of July 1 and 2, 2016 was the proximate cause of claimant’s decision to leave work and must be the focus of our analysis. With regard to the July 1 incident, claimant testified that on that date, the owner thrust his finger into claimant’s face, and angrily told claimant to stop, look the owner in the eye, and make the Greek dressing the owner had directed him to make. Audio recording at 16:44. Both the owner and a witness disputed claimant’s description of the owner’s behavior. The owner denied he behaved inappropriately in asking claimant to make the dressing; he said that he put his hand up to stop claimant

when claimant began walking away from the owner, apparently indicating a refusal to respond to the owner's request. Audio recording 29:44. Claimant's coworker, who witnessed the July 1 incident, provided a description of the July 1 incident consistent with the owner's description. Audio recording at 44:23. We find that the consistent accounts of the owner and claimant's coworker outweigh claimant's description of the July 1 incident. The preponderance of evidence therefore shows that the owner did not behave disrespectfully or inappropriately toward claimant on July 1.

In regard to the July 2 incident, although claimant was understandably upset by the owner's failure to respond to his request for assistance, the situation was not so grave that it left claimant no reasonable alternative but to quit his job. Claimant could have repeated his request to the owner, to make sure that the owner heard him. If claimant sincerely believed that the owner had deliberately denied him assistance, claimant could have asked the general manager to help him attempt to resolve the situation with the owner. A reasonable and prudent person would have pursued these alternatives and attempted to solve any perceived problem with the owner before deciding to quit his job. Claimant therefore failed to demonstrate good cause for voluntarily leaving work and is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-68563 is affirmed.

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

DATE of Service: October 24, 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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