

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1138

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74550). Claimant filed a timely request for hearing. On September 26, 2016, ALJ S. Lee conducted a hearing, and on October 4, 2016 issued Hearing Decision 16-UI-68568, affirming the Department's decision. On October 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sofa King, Inc., doing business as Morris' Fireside, employed claimant as a server in a restaurant from May 12, 2015 until June 10, 2016.

(2) In approximately early May 2016, a long-time employee and his daughter abruptly quit working for the employer. Afterward, claimant's work hours increased, but never exceeded 40 hours in any week. Claimant thought the employer should have more actively sought replacement employees. At around this time, claimant told the employer's owner that she was going to quit if he did not hire more employees before summer.

(3) Claimant did not get along with another server who generally worked evening shifts at the restaurant. Claimant thought this other server used drugs and attributed their conflicts to his drug use. Once, when claimant criticized the work ethic of the employer's cooks, this other server told claimant she should not criticize other employees and he "could have [her] job." Audio at ~17:00. Claimant interpreted his statement to mean that he would arrange to have her discharged. Audio at ~17:00. Claimant did not tell the owner what this server said to her, or that she suspected him of using drugs because claimant thought the server's father was good friends with the owner and the owner would only defend the server.

(4) On June 10, 2016, claimant was scheduled to work a morning shift. Since it was "Sandcastle Weekend" at Cannon Beach, claimant knew the restaurant was going to be very busy that day. Audio at ~9:55. Claimant saw that the server who would be working with her was the one whom she suspected

had the drug problem. Claimant was irritated that she had to work with him because he was not familiar with the breakfast menu and was not a “solid server.” Audio at ~10:19. Claimant also thought the restaurant, which had a fire burning in a fireplace, was overly warm that day and needed to be cooled down for her own comfort and that of the customers. Claimant opened the restaurant doors to allow cross-currents of cooler air to enter, and looked for a crank to open the windows. When claimant was unable to locate the crank, she asked her coworkers if they knew where the window crank was and they said they did not. Claimant believed the night servers had hidden the crank to irritate her. Claimant went to the kitchen to speak with the owner about the heat in the restaurant and the missing window crank. Claimant approached the owner and told him it was too hot to work in the restaurant that day. Claimant and the owner began to argue, with the owner stating to claimant that she was always complaining and seemed not to care about the restaurant. Claimant felt that the owner was telling her she was a “pain in everyone’s ass” and she “wasn’t important enough to listen to.” Audio at ~12:44. Claimant replied to the owner that she guessed he was correct and she did not care, and said, “I’m leaving. I’m too hot,” and, “I can’t work in these conditions.” Audio at 29:36. The owner told claimant that, if she left on Sandcastle Weekend, “Don’t bother to come back.” Audio at ~ 29:50. Claimant left the restaurant and did not return. Claimant voluntarily left work on June 10, 2016.

CONCLUSIONS AND REASONS: 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 listed several complaints she had about working for the employer and about certain of her coworkers at the hearing. Audio at ~9:55, ~11:23, ~13:30, ~15:00, ~17:01. ~18:00, ~19:46, ~20:32, ~24:13, ~26:15. From claimant’s testimony, it was never made apparent how these complaints led to her decision to leave work, or that they created grave circumstances for her. Absent evidence showing that the facts underlying claimant’s complaints caused her serious harm in some way, she did not meet her burden to show that grave reasons caused her to leave work. The incident that precipitated claimant’s decision to leave work was the temperature in the restaurant on June 10, 2016, her inability to locate a window crank, her belief that the night servers had hidden the crank and the owner’s mild rebuke to her about complaining. Nothing in claimant’s description of what happened on June 10, 2016 suggested or tended to suggest that a reasonable and prudent employee would have quit work in response to those events. It is not uncommon for employees to experience irritation at work and to be told by their employer to stop complaining, and most employees do not quit over it. Since claimant did not show that the incident on June 10, 2016 was grave or that other grave reasons motivated her decision to leave work on June 10, 2016, claimant did not meet her burden to show that she had good cause for leaving work when she did.

Claimant did not show that grave reasons caused her to leave work on June 10, 2016 and that she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-68568 is affirmed.

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

DATE of Service: October 27, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.