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BYE: 201647

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-1228

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause but was eligible to receive benefits through August 16, 2016 (decision # 91319). Claimant filed a timely request for hearing. On October 20, 2016, ALJ S. Lee conducted a hearing, and on October 27, 2016 issued Hearing Decision 16-UI-70085, affirming the Department's decision. On November 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Griffith Polymers, Inc. employed claimant as an assistant to the owner and president from July 21, 1987 until July 25, 2016.

(2) Until 2012 or 2013, or for approximately 25 years, claimant worked closely with the employer's owner and president and they had a close and good working relationship. In 2012 or 2013, the owner left the business and his son took succeeded him and became president. Claimant continued as the assistant to the new owner and president.

(3) After the son took over, he exhibited a different management style from that of his father. Claimant disliked the way in which the son treated his father and the employer's employees. Claimant became increasingly dissatisfied with the way in which the son operated the business and thought he did not communicate well with her. As time passed, claimant realized that the son was not involving her in the employer's operations to the extent his father had and was not seeking input from her as his father had. Once, the son referred to some people as "stupid Mexicans." Audio at ~11:24. Although claimant discussed with the son that making such comments was inappropriate, she did not discuss her general dissatisfactions about working with him.

(4) Over time, claimant and the son's working relationship deteriorated. Claimant disliked it when the son referred to a company with which he was employed in the past and unfavorably compared the

employer and its employees to that other company. Some of the employer's employees complained to claimant about the manner in which the son treated them. Claimant became increasingly unhappy, and concluded that she and the son were not "fond" of each other. The son was aware that claimant was unhappy with him.

(5) Sometime after the son assumed control of the employer, he implemented a new accounting system. The son wanted to learn where the numbers that were entered into the accounting system originated, so he did not consult with claimant about them in order to enhance his understanding of the system and the employer's operations. The son's wife began working for the employer and she was assigned responsibilities that previously had been claimant's responsibilities. Claimant came to believe the son wanted her to leave work as much as she wanted to be gone.

(6) In approximately late June or July 2016, claimant had a regular appointment with her physician. The physician observed that claimant's blood pressure was elevated and prescribed medication. In response to her physician's inquiries, claimant stated that she thought her blood pressure was elevated due to her unhappiness at work and difficulties dealing with the son.

(7) On July 25, 2016, claimant emailed a notice to the son that she was going to resign. Claimant had concluded it was "time to leave." Audio at ~10:44. In her resignation notice, claimant stated that she intended to leave in two weeks, which would have made August 8, 2016 her final working day. Exhibit 1 at 2. In a separate note claimant attached to the resignation notice, claimant stated "I am assuming you will not let me work any longer than today . . . but I can stay as long as you need the next few weeks." Exhibit 2 at 2. After the son received both notes on July 25, 2016, he told claimant he wanted her to leave that day. Claimant did not work any longer for the employer. The employer discharged claimant on July 25, 2016.

CONCLUSIONS AND REASONS. Claimant voluntarily left work on August 8, 2016, but is eligible to receive benefits for the weeks of July 14, 2016 through August 6, 2016 (weeks 30-15 through 31-16) due to her discharge on July 25, 2016.

Here, claimant notified the employer on July 25, 2016 that she planned to leave work on August 8, 2016, but the employer may have been unwilling to allow her to continue working after July 25, 2016. If an individual has notified an employer that the individual will leave work on a specific date and it is determined that the leaving would be for reasons that do not constitute good cause and the employer discharged the individual, not for misconduct, no more than 15 days prior to the planned voluntary leaving then the separation is adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. ORS 657.176(8)(a)-(c). In this event the individual is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving. ORS 657.176(8)(c). Since the employer may have discharged claimant on July 25, 2016, which was 14 days before claimant's planned voluntary leaving on August 8, 2016, ORS 657.176(8) is potentially applicable to the facts of this work separation if claimant's voluntarily leaving was not for good cause, the employer in fact discharged her and the discharge was not for misconduct. These issues are considered in turn below.

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 his employer for an additional period of time.

Claimant planned to leave work on August 8, 2016 as a result of her dissatisfaction with continuing to work as an assistant to the employer's new owner and president. While claimant mentioned at hearing that her blood pressure had become elevated in response to the conditions she disliked in the workplace, she did not suggest that health considerations caused her to decide to leave work or that they were a significant factor or any factor at all in that decision. Audio at ~13:44. Rather, claimant emphasized over and over that it was her inability to get along with the new owner and the difference in his management style from that of his father that led her to decide to leave work. Audio at ~10:44, ~11;24, ~12:12, ~12:26, ~12:50, ~13:26, ~14:24, ~17:75, ~18:09, ~19:50. There is insufficient evidence in this record to find that claimant's high blood pressure materially contributed to her decision to quit.

It is not unheard of for employees who assist a principal in an organization to dislike the principal's management style, the way in which the principal treats subordinate employees and to feel underappreciated or ignored by the principal. In a case like this one, where claimant appeared to have had a longstanding and close working relationship with the previous owner, whom she appeared to have admired, it is also understandable she would have been dismayed by the contrast she perceived between the previous and current owner's personalities and temperaments. However, nothing in claimant's descriptions of the current owner's interactions with her or the conditions in the workplace was sufficient to establish that she was subjected to objectively grave circumstances. *See e.g. McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (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"). At most, it appeared that claimant reacted negatively to the professional and personal styles of the current owner that subjectively displeased her. A reasonable and prudent person, exercising ordinary common sense and who wanted to remain employed, would not have considered the circumstances that claimant described to be objectively grave reasons to leave work. Claimant did not demonstrate that she had good cause to leave work when she did.

Since claimant's leaving was not for good cause, the next consideration in determining the applicability of ORS 657.176(8) to her work separation is whether she was discharged before the date she planned to leave. If claimant could have continued to work for the employer for an additional period of time when the separation occurred, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

The issue here is whether claimant was willing to work after she gave notice until her planned voluntary leaving date of August 8, 2016 or whether the employer was unwilling to allow her to work between July 25, 2016 and August 8, 2018. The employer's owner contended that claimant expressed to him

orally on July 25th that she did not want to work after July 25th. Audio at ~27:30. Claimant contended it was the owner who told her on July 25th, "It would be better if you left [today]" and went with her to gather up her personal belongings. Audio at ~30:50, ~32:18, ~32:46. In the written resignation notice that claimant submitted on that same day, she stated she intended to continue working until August 8th, and she anticipated in her separate note that the owner might not want her to stay working throughout the notice period, but offered a second time to do so. Exhibit 1 at 2, Exhibit 2 at 2. Viewed against these notes written roughly contemporaneously with the work separation, it is not likely claimant would have so abruptly reversed her position and suddenly decided she was unwilling to work during the notice period. Also against the backdrop, it is understandable and reasonable that claimant would have construed the owner telling her so soon after receiving both notes that it would be better if she did not work after that day to have been a rejection of her offer to continue to work for two additional weeks. The employer discharged claimant on July 25, 2016 when the owner expressed an unwillingness to allow claimant to work out the notice period.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

The employer did not provide any reasons at hearing for why it was unwilling to allow claimant to continue working from the date she gave notice of her planned leaving until the date on which she actually planned to leave. Nothing in the record suggests or tends to suggest that claimant had engaged in any misconduct. That claimant had announced to the employer that she planned to leave work in two weeks was not reasonable a willful or wantonly negligent violation of the employer's standards. On this record, the employer discharged claimant but not for misconduct on July 25, 2016.

The employer's discharge of claimant that occurred 14 days before her planned leaving date of August 8, 2016 is a work separation that is subject to ORS 657.176(8). Applying that statute to the facts of this case, claimant is eligible to receive benefits for the weeks of July 24, 2016 (the week in which the discharge occurred) through August 6, 2016 (the week before the week of the planned voluntary leaving) or for weeks 30-15 through 31-16. However, despite the intervening discharge and applying ORS 657.176(8)(c), claimant's work separation is considered a voluntary leaving.

DECISION: Hearing Decision 16-UI-70085 is affirmed.

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

DATE of Service: <u>November 30, 2016</u>

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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