

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0004**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 123313). The employer filed a timely request for hearing. On October 4, 2016, ALJ Vincent conducted a hearing, and on October 17, 2016 issued Hearing Decision 16-UI-68827, reversing the Department's decision and concluding claimant voluntarily left work without good cause. On October 24, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On November 4, 2016, EAB issued Appeals Board Decision 2016-EAB-1185, concluding that claimant voluntarily left work but reversing and remanding the matter for further development of the record on whether claimant had good cause for leaving. On December 1, 2016 and December 12, 2016, ALJ Vincent conducted hearings on remand and on December 19, 2016 issued Hearing Decision 16-UI-73175 again affirming the Department's decision. On December 29, 2016, clamant filed an application for review with EAB.

When reaching this decision, EAB considered claimant's written argument that was submitted on the first review of this matter only to the extent it relied on information contained in the hearing record as developed in the initial hearing and the hearings on remand. *See* OAR 471-041-0090(2) (October 29, 2006). When reaching this decision, EAB considered the employer's written argument that was submitted on the second review of this matter.

**EVIDENTIARY MATTER:** The ALJ admitted Exhibit 4 and Exhibit 5 into evidence, but did not mark the documents or note their admission in Hearing Decision 16-UI-73175. Audio of December 12, 2016 Hearing at ~5:00 *et seq.*; Hearing Decision 16-UI-73175. Both exhibits were described with sufficient specificity at hearing to allow EAB identify them. Audio of December 12, 2016 Hearing at ~5:14 to ~6:36. EAB has marked the documents that the ALJ admitted into evidence, and considered them when reaching this decision.

**FINDINGS OF FACT:** (1) Green Sports Alliance employed claimant as membership director from October 1, 2011 until June 30, 2016. The employer was established as a non-profit organization with a stated mission of using the cultural and market influences of sports activities to promote healthy and

sustainable communities. The employer wanted to motivate organizations and people associated in various capacities with sports to promote efficient use of resources and encourage socially responsible practices and actions. Claimant was very committed to the employer's goals as he understood them.

(2) In approximately October 2014, one of the employer's founders resigned from the employer's board of directors and became a staff member and chief operating officer (COO). At around the same time, a new person became president. As of October 2014, claimant directly reported to the president. At that time and after, the employer had a staff of between six and eight people. The employer's Board of Directors was responsible for establishing the employer's overall direction.

(3) Until the new COO assumed responsibility, claimant perceived that the employer operated collaboratively and allowed its employees significant autonomy in determining how best to discharge their duties. Claimant approved of this method of operation. After the new COO assumed control, claimant perceived that he preferred a more hierarchical organization and made decisions in a far less collaborative fashion than had previously been done. Claimant disliked that management style.

(4) Sometime around December 2014, claimant was given the option of reporting to the president or to the new COO and opted to report to the president. Claimant perceived the new COO reacted to his decision with "disbelief and consternation." Transcript at 8. Claimant thought the COO felt stymied because he had wanted to have claimant in a position where he could direct claimant's activities.

(5) In May or June 2015, claimant was going to attend an out-of-town conference with other staff members. The COO wanted claimant to share a hotel room with another staff member. Claimant thought it was inappropriate for the COO to decide his lodging assignment, since he was not claimant's supervisor. Claimant told the COO that he was "not comfortable" sharing a room and perceived that the COO "dismissed" his concerns. Transcript at 10-11. Claimant thought he ultimately got a single room only because the employer's president intervened with the COO on his behalf. Claimant was upset about this incident because he thought the COO had engaged in an "aggressive attempt to force a roommate upon [him]" and had decided his lodging without first consulting with him. Transcript at 11.

(6) Around December 2015 or January 2016, claimant expected to attend some meetings in Canada for the employer and needed to renew his passport. Claimant asked the COO if the employer would pay for his passport renewal as a business expense. The COO refused to authorize payment and told claimant it was acceptable to him if claimant did not attend the meetings in Canada. Claimant thought that the COO's attitude about whether or not he attended those meeting indicated that that the COO did not think he was very important in or valuable to the employer's organization. Transcript at 13.

(7) Before January or February 2016, when claimant thought his direct supervisor was still the employer's president, the COO met with claimant several times to ask claimant such things as if he thought he fit in with the mission of the employer and what he thought his future would be with the employer. Claimant thought these meetings were "unauthorized" since the COO was not his supervisor, and only his supervisor, the president, should raise such matters with him. Transcript at 11. Claimant suspected the COO was attempting to gain control over him or the employer's management.

(8) Around January or February 2016, the COO assumed the position of executive director. After he took over as executive director, claimant perceived that he wanted to make the employer more

hierarchical and less collaborative and allow staff members less autonomy in decision-making. Soon after he assumed the position of executive director, that director eliminated the group strategy meetings that had previously been held in the employer's organization in favor of one-on-one meetings between himself and individual staff members. Transcript at 25. Claimant thought that by doing so the executive director was trying to control the flow of information in the organization, reduce the opportunity for dissent and impose his will on the organization. Claimant thought the executive director was trying to move the employer's organization toward a more traditional business model, with an emphasis on membership campaigns which would generate revenues rather than on the achieving the employer's non-profit mission. Transcript at 37-38. Claimant deeply disliked what he thought was the executive director's attempt to change the employer's culture, its non-hierarchical and collaboration driven organizational structure and the attenuation of its mission.

(9) After February 2016, claimant became concerned that the executive director's leadership was moving the employer in a wrong direction and that the employer would lose credibility in acting on behalf of its mission. Transcript at 18. Between February 2016 and May 2016, claimant spoke to the president, the chairman of the board and several board members about his concerns for the employer's "long-term viability" under the leadership of the executive director and the executive director's "huge shortcoming" as a leader. Transcript at 20. None of them did anything in response to claimant's concerns and suggestions and the executive director's vision for the employer's organization, as claimant perceived it, did not change. Transcript at 23. Claimant tried to initiate staff meetings to formulate a "strategy for moving [the employer] forward in a positive way," but those meetings did not achieve the results that claimant desired. Transcript at 23. Claimant thought that the meetings were held only to "kind of humor[] me." Transcript at 24. Claimant also met with the executive director to discuss his concerns. Claimant told the executive director he was not comfortable continuing to report to the executive director and he did not like the emerging emphasis of the Board of Directors and the executive director on membership growth. Transcript at 49, 50, 63. The executive director did not agree to change his approach or focus.

(10) In mid-May 2016, claimant met with the chairman of the board and brought up his concerns about the executive director again. The chairman told claimant that he should meet the executive director "in the middle without any explanation of what that might entail." Transcript at 25. Claimant decided that the employer's work environment had become "toxic" and that he could not continue working unless he reported to someone other than the executive director. Transcript at 18, 21.

(11) On May 22, 2016, claimant sent an email to the chairman of board entitled "Current State of Affairs." Exhibit 1 at 4. The email laid out the difficulties that claimant perceived he had experienced in dealing with the executive director and some of his complaints about dealing with the executive director. The email further stated:

[A]fter five years with the [employer], I've had enough. I would like to work with you on a smooth, peaceful, and productive transition process out of my role as Membership Director. \*\*\* I don't want to leave the organization high and dry, and my first priority is to ensure that all of my roles and responsibilities are well accounted for, so our members continue to be well taken care of. I am willing to stay on through the Summit [a conference occurring on June 30, 2016] or even shortly thereafter as we are severely [at] overcapacity already, and also to provide for ample time for the

hiring and training of new employees, to make the transition as smooth as possible. \*\*\*\* It breaks my heart to reach this point. \*\*\*\* However, I cannot continue doing my current role in this organization as it currently exists. I greatly appreciate your consideration and support, and I look forward to working with you soon on a post five-year severance package and a departure plan [that is] respectful of everyone concerned.

Exhibit 1 at 6.

(12) On May 24, 2016, the executive director, the vice-chairperson of the board and another employer representative met with claimant to discuss claimant's email. The executive director told claimant the Board had accepted his resignation and that his last day of work would be June 30, 2016. Audio of October 4, 2016 Hearing at ~13:45; Exhibit 3 at 1. The executive director told claimant that a separation agreement would be presented to him shortly and then discussed other matters related to winding up claimant's employment. Claimant told them he would work in any capacity until June 30, 2016.

(13) On June 30, 2016, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

For the reasons we set out in Appeals Board Decision 2016-EAB-1185 (November 4, 2016), and incorporate herein by reference, claimant's work separation was a voluntary leaving. The issue that remains is whether claimant did not leave work for good cause and whether claimant is or is not disqualified from receiving benefits based on this work separation.

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.

Although claimant broadly characterized the actions of the executive director during his tenure as being "intolerable," "highly stressful" and having created a "toxic" work environment, the incidents that claimant described to support those characterizations appeared likely to have resulted from the organizational decisions the executive director made in good faith, and not to have been intended to harm claimant in any way. Transcript at 4, 5, 8. Claimant did not describe any behavior of the executive director that suggested the executive director was acting abusively toward him or in manner that would have been construed as oppressive or unbearable by a reasonable and prudent person in claimant's situation. Rather, it appeared that claimant disliked the executive director's management style, which was not as "collegial" or "collaborative" as claimant desired and did not allow him to operate as "autonomously" or with only indirect supervision as he would have liked. Transcript at 11, 14, 17, 21, 34. It also appeared that claimant very much opposed what he perceived to be the executive director's business model for the employer's operations, which focused on membership growth rather

than on what claimant thought of as the employer's mission to promote environmental sustainability, which claimant believed was causing the employer to lose its "credibility." Transcript at 18, 20, 23, 35, 37. That claimant disagreed with the executive director's vision for the employer and how the executive director chose to manage the employer's operations to achieve that objective did not create a situation that a reasonable and prudent person would have considered grave, particularly when the employer's board of directors apparently knew of the executive director's approach and claimant's objections and did not take actions to change that approach. While claimant's commitment to his own views about the employer's mission and the management style that would best obtain it may have been deep-seated and sincere, and that those views were in diametric opposition to those held by the executive director does not, without more, establish that claimant had good cause for leaving work. On this record, claimant did not show by a preponderance of the evidence that grave reasons caused him to leave work when he did.

Claimant did not show he left work for reasons that objectively constituted good cause. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-73175 is affirmed.

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

**DATE of Service:** February 8, 2017

**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](http://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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