

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0054

Reversed
Disqualification

PROCEDURAL HISTORY: On November 17, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 91202). Claimant filed a timely request for hearing. On December 29, 2016, ALJ Wyatt conducted a hearing, and on January 5, 2017, issued Hearing Decision 17-UI-74158, concluding that claimant voluntarily left work with good cause. On January 12, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTERS: At the hearing, the ALJ denied admission to documents submitted by the claimant and the employer after December 13, 2016, but did not mark these documents as exhibits. A document submitted by claimant and received by the Office of Administrative Hearings on December 15, 2016, which consists of screen shots of text messages, has been marked as Exhibit 3. The documents which the employer submitted by letter dated December 27, 2016, which consist of a cover letter, a notarized statement, a copy of an email, and three letters, has been marked as Exhibit 4. The 363 pages of material which the employer submitted on December 29, 2016, have been marked as Exhibit 5. The ALJ did not err in refusing to admit Exhibits 3, 4, and 5 because they are not relevant and material to the issues in this matter.

WRITTEN ARGUMENT: The employer submitted three written arguments to EAB. The employer failed to certify that it provided a copy of its first written argument, submitted on January 11, 2017, to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). We therefore did not consider this argument when reaching this decision.

The employer's second written argument, submitted on January 27, 2017, referred to a number of materials in Exhibit 5, and also included new information that was not part of the hearing record. Because we agree with the ALJ's decision not to admit Exhibit 5, we did not consider any materials contained in that exhibit when reaching this decision. In regard to the new information offered by the employer in its January 27 argument, the employer failed to provide a reason why circumstances beyond its reasonable control prevented it from offering the information at the hearing, as required by OAR 471-

041-0090(2)(b) (October 29, 2006). We therefore did not consider this information when reaching this decision.

The employer's third written argument, submitted on January 30, 2017, included a copy of Hearing Decision 17-UI-75408, which was issued on January 25, 2017. In this hearing decision, an ALJ concluded that a coworker of claimant's, who quit her job for the employer on the same date that claimant did, voluntarily left work without good cause. Under OAR 471-041-0090(2)(a), new information not offered at the hearing may only be considered if the information is relevant and material to EAB's determination. Any conclusion regarding the reasons why claimant's coworker quit her job are not relevant and material to our determination as to why claimant quit her job and whether she had good cause to do so. We therefore did not consider Hearing Decision 17-UI-75408 when reaching this decision.

FINDINGS OF FACT: (1) From February 2015 until October 5, 2016, Traffic Control Consultants employed claimant, last as a traffic control supervisor.

(2) Sometime prior to September 19, 2016, claimant began having difficulties working with one of the employer's co-owners. On September 19, 2016, claimant told the owners that she would be quitting in two weeks. The owners convinced claimant to stay on the job, however.

(3) On October 5, 2016, claimant arrived at a job site and began setting up the appropriate traffic control devices and assigning tasks to her coworkers. Claimant told one of the co-owners, who was working with her, that he needed to put on his high-visibility pants. The owner responded that he did not need to, because he was wearing a high-visibility coat.¹

(4) After arguing with the owner about the garments the owner was required to wear, claimant became upset, returned to her truck, and called the other owner. Claimant told the owner that she wanted to "be placed on immediate and permanent layoff" due to the behavior of the other owner. The owner agreed to claimant's request. Exhibit 1, Statement of Tina Mazzariello. Claimant and two coworkers then finished placing and setting the signs and equipment in the work zone to which they had been assigned.

(5) After her assigned duties in setting up the work zone, claimant returned to the parking lot where she, the owner, and her coworkers planned to meet. After learning from a supervisor that another traffic control supervisor would soon be arriving at the jobsite, claimant told the supervisor and the owner that she was leaving. The owner began arguing angrily with claimant, telling her that she needed to stay on the job. When a coworker attempted to intervene, the owner told the coworker to "shut up," because he was trying to talk to claimant. Transcript at 29. Claimant then left the jobsite, and never returned to work for the employer. Claimant quit her job because she believed that the owner's behavior on October 5 made it impossible for her to safely perform her job duties.

CONCLUSION AND REASONS: We disagree with the ALJ, and conclude that claimant voluntarily left work without good cause.

¹ Standards for temporary traffic control adopted by the Oregon Transportation Commission require that workers wear high-visibility safety apparel that meets the requirements of the American National Standards Institute/International Safety (ANSI/ISEA) *High Visibility Safety Apparel Guidelines*. Exhibit 2, excerpt from the "Oregon Temporary Traffic Control Handbook."

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 quit her job because she believed that the behavior of one of the employer’s owners on October 5, 2016 made it impossible to perform her job duties safely and effectively. According to claimant, after she told the owner to put on high-visibility safety pants to perform a traffic control task she had assigned him, the owner “flew out of his truck,” and began yelling at her; the owner continued “screaming” at claimant even after she went to her truck and closed the door. Claimant asserted that because she was afraid and surprised by the owner’s behavior, she called the other owner and asked that she be “placed on immediate and permanent layoff,” a request to which the owner agreed. Exhibit 1, Claimant’s statement. The employer’s owner, however, denied that he ever became angry at claimant’s request that he put on high-visibility safety pants. According to the owner, he told claimant that he had researched the subject and concluded he would meet the applicable guidelines by wearing a high-visibility coat. The owner testified that he “wasn’t screaming and yelling” at claimant during their brief argument about safety gear. Transcript at 23-24.

Other than the testimony of claimant and the employer’s owner, the only other evidence of the events that led to claimant’s resignation were the written statements of two coworkers who were present during the October 5 altercation. Although these statements confirm claimant’s account of the dispute with the owner, we find these statements have no evidentiary value – they are undated, unsigned and also self-serving, since the two coworkers apparently voluntarily left work for the employer on the same date that claimant did. The credible evidence regarding the employer’s actions on October 5 consists of the testimony of claimant and the owner, which is, at best equally balanced. Claimant therefore failed to meet her burden to demonstrate that the employer’s behavior was so extreme that it created a grave situation that left her with no alternative but to immediately leave work.

Claimant did not demonstrate good cause for voluntarily leaving work. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-74158 is set aside, as outlined above.

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

DATE of Service: February 6, 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. 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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