

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0137-R

Appeals Board Decision 2017-EAB-0137 Adhered to on Reconsideration
Hearing Decision 17-UI-74803 Reversed
No Disqualification

PROCEDURAL HISTORY: On November 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 133051). Claimant filed a timely request for hearing. On December 16, 2016 and January 9, 2017, ALJ Shoemake conducted a hearing, and on January 17, 2017, issued Hearing Decision 17-UI-74803, affirming the administrative decision. On February 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On February 24, 2017, EAB issued Appeals Board Decision 2017-EAB-0137, concluding that claimant voluntarily left work with good cause. Also on February 24, 2017, EAB received the employer's written argument. EAB will exercise its discretion under ORS 657.290(3) to reconsider its decision and address some of the issues raised in the employer's argument.

In its argument, the employer asserted that claimant failed to pursue reasonable alternatives to voluntarily leaving her position because of the behavior of the store manager. The employer contended that claimant could have sought assistance from the employer's human resources department (HR), asserting that the "first time [claimant] formally complained to HR about the store manager" was on September 29, 2016, the date on which claimant told the employer she was quitting her job, effective October 13, 2016. The record shows, however, that although *claimant* never made a formal complaint about the store manager's conduct to the employer's HR department, her *coworker* did so in December 2015. Although HR investigated the matter and concluded the problem was resolved, the store manager's aggressive behavior toward claimant continued. 12/16/16 Transcript at 38, 19-20, 39. In addition, the record shows that HR was aware of claimant's concerns about the store manager's behavior prior to September 29. On February 18, 2016, claimant complained to an HR representative that the store manager had threatened that her job would be in jeopardy if she accrued additional absences; the HR representative subsequently met with claimant and the store manager to resolve claimant's concerns. Exhibit 1. 2/18/16 Meeting Notes. At a September 8, 2016 meeting with an HR representative and other managers, claimant told the HR representative that she found the store manager's behavior to be "intimidating." The HR representative then suggested that claimant have most of her conversations with the store

manager in the presence of the HR representative. Exhibit 1, 9/8/16 Memo to File. Based on this record, we find no error in the conclusion we reached in Appeals Board Decision 2107-EAB-0137: that claimant and another employee tried to get HR to resolve claimant's workplace problems, that those attempts had been unsuccessful, and that further complaints to HR would therefore have been futile.

Also in its written argument, the employer contended that claimant had the reasonable alternative of requesting a transfer to another job or store, but "declined the suggestion of exploring alternative store locations and/or positions." However, the record is devoid of any evidence that claimant was ever offered a transfer and refused to consider it. To the contrary, claimant testified that she asked about a transfer, but was told that any such transfer would involve a demotion and reduced pay. 12/16/16 Transcript at 26. The record therefore shows that claimant was discouraged from requesting a transfer.

Because the employer has failed to demonstrate any error of fact or law in Appeals Board Decision 2017-EAB-0137 that would require correction, we adhere to that decision on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision "to the extent necessary and appropriate for the correction of a previous error of fact or law").

DECISION: Hearing Decision 17-UI-0137 is set aside, as outlined in EAB Decision 2107-EAB-0137.

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

DATE of Service: February 28, 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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