

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0199

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73415). Claimant filed a timely request for hearing. On January 25, 2017, ALJ Logan conducted a hearing at which the employer failed to appear, and on January 31, 2017 issued Hearing Decision 17-UI-75834, affirming the Department's decision. On February 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. We considered claimant's argument only to the extent it was based on information in the record.

FINDINGS OF FACT: (1) RI KY Roofing & Sheet Metal LLC employed claimant from February 1, 2013 to October 4, 2016 as a bookkeeper.

(2) Claimant was dissatisfied with how the employer's owner treated her. The owner sometimes asked claimant to do personal errands for her such as picking up the owner's children from school or providing the owner with a ride somewhere. Other times, the owner sent claimant work-related text messages when claimant was not at work. Claimant did not complain about the errands or text messages she received outside of work. The owner sometimes yelled at claimant and was critical of her, stating that she was "useless," asking her why she did not finish work or do a better job, and blaming claimant if the employer missed deadlines. Audio Record at 43:31 to 45:33. The owner did not use foul language toward claimant.

(3) The owner sometimes asked claimant to tell a vendor that the employer had already sent payment when it had not yet sent payment, or to send a payment for an amount that was less than agreed.

Claimant also felt frustrated by the owner's lack of communication with her because she did not visit the office regularly, and often did not respond to claimant's telephone calls, text messages or emails.

(4) On October 4, 2016, some of the employer's roofers were awaiting directions regarding a potential roofing job for that day. The owner sent claimant a text message asking claimant to contact the roofing materials vendor for the roofers' job to "release an order." Exhibit 1 at 4. Claimant sent the owner a text message that she did not know how to release an order. The owner responded, "Please call [the vendor] and figure it out." *Id.* Claimant spoke with the vendor and learned that it required payment before it would release the materials. Claimant texted the owner, "[The vendor] wants payment." The owner responded again, "Figure it out." *Id.* Claimant was upset because she believed the owner wanted her to lie to the vendor to convince it to release the materials and because the owner did not answer her telephone calls when claimant called the owner to discuss the matter. Claimant told the vendor that the employer was not able to pay for the materials at that time, but the vendor agreed to release the materials anyway. Claimant began crying and gave her work keys to a coworker and told him she quit.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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 asserted that she left work because the owner's behavior toward her was "psychological abuse." Audio Record at 39:50 to 40:06. Claimant's undisputed testimony was that the owner yelled at her, criticized her work performance, blamed her for missed deadlines, and sometimes asked claimant to perform personal errands for her. Claimant was also dissatisfied on October 4, 2016 and other occasions when she believed that the owner ignored her attempts to contact her and told claimant or implied that claimant should be untruthful to vendors.

Personal abuse at work can, under some circumstances, amount to good cause to quit a job. *See McPherson v. Employment Division*, 285 Or 541, 557 (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"). However on this record, claimant failed to meet her burden to show that the owner's treatment of her rose to the level of "personal abuse." She described the owner as a "bully" who would "say mean things" and "make things [claimant's] fault." Audio Record at 15:26 to 15:39. However, she also described how the owner occasionally complimented her work and gave her rewards. Audio Record at 15:40 to 15:44. Although the record shows that claimant's work environment was unpleasant, claimant failed to establish that it was personally abusive to the extent that it gave her good cause to quit. Nor did

claimant show that it would have been futile to complain to the owner about the owner's requests to run personal errands or communications while claimant was not at work.

To the extent claimant quit work because the owner told claimant or implied that claimant should be untruthful to vendors, claimant failed to show that the owner's actions created a situation of such gravity that claimant had no reasonable alternative but to quit when she did. The October 4 text messages directing claimant to "figure it out" did not explicitly direct claimant to lie to a vendor. Even assuming the owner wanted claimant to lie to the vendor, claimant had the reasonable alternative of being honest toward the vendors, as she was on October 4, 2016. Moreover, there is no evidence in the record that the owner subjected claimant to discipline for refusing to be dishonest. Claimant failed to show that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from the receipt of unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-75834 is affirmed.

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

DATE of Service: March 13, 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.

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.