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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0404

Modified
Disqualification

PROCEDURAL HISTORY: On February 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112901). Claimant filed a timely request for hearing. On March 21, 2017, ALJ Monroe conducted a hearing at which the employer did not appear, and on March 24, 2017 issued Hearing Decision 17-UI-79634, concluding claimant voluntarily left work without good cause and was disqualified from receiving benefits as of January 15, 2017. On April 4, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Connor Manufacturing Services, Inc. employed claimant from September 2003 until January 20, 2017, last as production control manager and warehouse supervisor.

(2) As of November 2016, claimant was the customer service manager in addition being the production control manager and warehouse supervisor. At that time, claimant's husband was the employer's plant manager and had been employed by the employer for approximately 23 years. Although an employee employed in claimant's capacities would normally have reported to the plant manager, claimant did not do so because of nepotism concerns. Claimant reported to the employer's president. Sometime before the November 2016, a new person assumed the position of the employer's general manager.

(3) Throughout her employment, claimant had a "tumultuous" relationship with the employer's president. Transcript at 13. On November 21, 2016, claimant had a two hour meeting with the president. Claimant and the president discussed many things, including work-related matters with which claimant was frustrated. During that meeting, they did not discuss claimant's behavior in the workplace. Transcript at 13.

(4) On approximately November 29, 2016, all of the employer's managers, including claimant, participated in a conference call with the president. During that call, the president told the managers that

significant "changes were coming" to the lines of authority in the workplace. Transcript at 23. The president stated that an updated organizational chart would be distributed to the managers sometime in the future. This conversation was the first notice to claimant and the other managers that the changes would be made to the employer's management structure.

(5) On December 2, 2016, claimant again met with the president. Claimant told the president that she "wanted to be out of customer service" and focus on her responsibilities as production control manager. Transcript at 10. Immediately after claimant made this statement, the president took what claimant thought was a new organizational chart and crossed off claimant's name where it appeared under that of the general manager as directly reporting to him. Claimant and the president also discussed to whom claimant should report under the employer's new organizational structure, but no decision was reached about that matter. Claimant and the president then discussed a possible assignment of claimant to the "corporate level" and having a role facilitating overseas projects. Transcript at 12. At the conclusion of the meeting, claimant understood that the president would contact her when a decision had been made about the person to whom she was expected to report.

(6) After December 2, 2016, neither the president nor any other employer representative contacted claimant to inform her of her reporting responsibilities or provided an updated organizational chart to her. Claimant contacted the employer's human resources representative several times after December 2, 2016 inquiring about the person to whom she should report. The representative was unable to provide this information to claimant.

(7) On January 9, 2017, claimant was ill and did not report to work. As he had done several times during the approximately 13 years of claimant's employment, claimant's husband notified an employer representative that claimant was not going to report for work.

(8) On January 10, 2017, when claimant reported for work, the new general manager and the human resources representative met with her and gave her a written warning. The warning stated that claimant had violated the employer's expectations by failing to notify her supervisor, the general manager, of her absence on January 9, 2017. Until she received the warning, claimant had not been aware that the general manager was her supervisor or that she should be reporting to him. The warning also stated that the employer was dissatisfied with several aspects of claimant's behavior in the workplace based on conduct reported by the president and that the president had given claimant a "stern talk" about her behavior during their meeting on November 21, 2016. Transcript at 12. However, the president had not addressed claimant's behavior on November 21, 2016 or at any other time and claimant did not think she had ever engaged in inappropriate workplace behavior. The warning stated that claimant needed to show immediate "demonstrated sustained improvement" in meeting the employer's expectations in the next 30 days and that claimant's behavior would be evaluated weekly to determine whether she was in compliance with those expectations. Transcript at 17. Claimant refused to sign the warning. Claimant told both the general manager and the human resources representative that she had not known until then that she was expected to report her absences to the general manager. Claimant also told them that the president's account of her workplace behaviors and his November 21, 2016 discussion with her were false and had not occurred. The human resources representative told claimant that it was "[her] word against [the president's]" and that the representative was not, at that time, going to disagree with the account of employer's president. The representative advised claimant to call the president and discuss the matter with him. Claimant did not contact the president because she thought the president would not

take back what he had reported in the warning and a call could engender another false account of a conversation between her and the president. Claimant did not ask the representative or the general manager to call the president on her behalf or to participate with her in making such a call and be an independent witness to it. The meeting concluded.

(9) After the January 10, 2017 meeting, claimant decided based on the January 10, 2017 warning that the workplace was hostile toward her, that neither the human resources representative nor the general manager would support her in challenging the content of the warning. Claimant suspected that the issuance of that warning was the first step in an employer plan to discharge her. Claimant did not attempt to contact the president, the general manager or the human resources representative at any time after January 10, 2017 to raise her concerns. Nor did claimant attempt to contact other members of the employer's upper management, such as the chief executive officer or the chief financial officer after January 10, 2017 to discuss her concerns. Claimant decided to quit work.

(10) On January 12, 2017, claimant notified the employer that she was leaving work in two weeks, or on January 26, 2017. Claimant planned to work until January 26, 2017. On January 13, 2017, the employer told claimant that it wanted her to work only until January 20, 2017, which the employer thought would be sufficient time for her to train other employees to assume her responsibilities.

(11) On January 20, 2017, the employer discharged claimant.

CONCLUSIONS: Claimant voluntarily left work without good cause. However, claimant is eligible to receive benefits for the period of January 15, 2017 through January 21, 2017 (week 03-17).

In this case, claimant's plan to leave work on January 26, 2017, which she announced to the employer on January 12, 2017, was disrupted when the employer discharged her on January 20, 2017. When a discharge intervenes between the announcement of an intention to leave work and the date of the planned leaving, ORS 657.176(8) provides that if the voluntary leaving would have been for reasons that do not constitute good cause, the discharge was not for misconduct and the discharge occurred no more than 15 days prior to the date of the planned voluntary leaving, then the separation shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred, but the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week in prior to the week of the planned voluntary leaving date. Claimant notified the employer on January 12, 2017 that she was leaving work in two weeks, or by January 26, 2017, and she was discharged on January 20, 2017, which was six days prior to the planned leaving date. Since claimant was discharged less than 15 days before she planned to leave, ORS 657.176(8) is potentially applicable to her claim. We next consider whether claimant's planned voluntary leaving would have been for good cause to determine the applicability of ORS 657.178(8).

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/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.

Claimant left work because she thought that continuing to work for the employer was untenable after receiving the January 10, 2017 warning. While the warning may have been supported by inaccurate facts as to the president's observations of claimant in the workplace and the substance of the president's conversation with claimant November 21, 2016, claimant presented no evidence other than the warning itself as supporting or independently corroborating her assertion that the warning was the first step in an effort to discharge her. In addition, the language of the warning allowed claimant 30 days to remedy the issues that it addressed and claimant did not contend that she feared she would be discharged any earlier than February 9, 2017 – the end of the 30 day period. Claimant did not show that there was nothing she could have done in the 30 days allowed to her by the warning to address the issues raised by the warning. It also does not appear that claimant's discharge was imminent as of the date she announced her intention to quit or that any harm, let alone a grave harm, was avoided by her quitting work rather than, assuming claimant was correct, allowing the employer to discharge her at the conclusion of the 30 day period. Nor does it appear that there were any workplace circumstances that would significantly and adversely affected claimant if she had remained in the workplace after January 10, 2017. On these facts, even if the warning was based on erroneous information, a reasonable and prudent person would have continued working for the 30 days allowed by the warning, would have attempted to satisfy the terms of the warning and would have tried to maintain her employment

Although claimant considered the inaccuracies in January 10, 2017 warning, and the suggestion of the human resources representative that she contact the president if she disputed the facts underlying the warning to evidence that the workplace was hostile, the facts she presented during the hearing were insufficient to establish the existence of such hostility, that it was a grave reason for her to leave work or that she had no alternative to it other than to quit.. First, claimant failed to show that, assuming the warning was based on inaccurate facts, its issuance was other than an aberrational error and that it portended the commencement of a campaign of hostility, maltreatment or abuse toward claimant. Second, while claimant broadly characterized that the workplace was "hostile," she did not identify any alleged acts of hostility other than the January 10, 2017 warning and did not identify any specific harms to herself or her mental, emotional or physical health that resulted from that alleged hostility. Third, claimant did not show that, rather than quitting, it would have been futile for her to have contacted the president to determine if the inaccuracies in the warning were inadvertent errors rather than intentional falsehoods or, if she thought the president might react negatively to further contact from her, to have requested that the human resources representative or the general manager participate with her in such a call. On this record, claimant did not rule out that the alleged inaccuracies in the January 10, 2017 warning were innocent errors rather than deliberate misrepresentations and that the president would not have retracted those errors had he been notified of them. For these reasons, claimant did not show that that the circumstances of which she complained were grave and that she had no alternative to leaving work when she did. Claimant did not demonstrate good cause for leaving work.

Since claimant's voluntary leaving would not have been for good cause, we next consider whether the employer's discharge of claimant was or was not for misconduct in order to determine the applicability of ORS 657.176(8) to claimant's circumstances. The only reason provided in the record for claimant's discharge was claimant's statement that "it's common in situations like mine," from which we infer that the employer preferred that employees not linger on in the workplace continuing working after they had

announced an intention to quit. Transcript at 6. Absent the presence of other circumstances, it is not a willful or a wantonly negligent violation of the employer's standards for a person to leave work or announce that they plan to do so. There is insufficient information in this record to conclude that the employer discharged claimant for misconduct.

Because claimant's leaving would not have been for good cause and claimant was discharged not for misconduct no more than 15 days prior to the date that she planned to leave work, ORS 657.176(8) is applicable to her claim. Accordingly, claimant is eligible to receive benefits for the week in which the discharge occurred, the week of January 15 through January 21, 2017 (week 03-17), which is also the week prior to the week of the planned voluntary leaving on January 20, 2017. The ALJ erred in concluding in Hearing Decision 17-UI-79634 that claimant was disqualified from benefits, effective January 15, 2017.

Claimant voluntarily left work without good cause on January 26, 2017. Despite the discharge that intervened on January 20, 2017, claimant is eligible to receive benefits for the week of January 15 through January 21, 2017, and is disqualified from receiving benefits based on this work separation effective January 22, 2017.

DECISION: Hearing Decision 17-UI-79634 is modified, as outlined above.

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

DATE of Service: <u>April 25, 2017</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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