

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0440

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142448). Claimant filed a timely request for hearing. On March 23, 2017, ALJ Monroe conducted a hearing, and on March 31, 2017 issued Hearing Decision 17-UI-80079, affirming the Department's decision. On April 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Carlton Packing Company employed claimant from October 2, 2007 until December 27, 2016, last as a custom technician slicing bacon.

(2) As of December 2016, claimant's mother was seriously ill and required care. Claimant's sister provided care for the mother during days and claimant cared for the mother during evenings and nights after she was off work. On December 2, 2016, the employer's owner notified a human resources generalist that claimant had stated to her that she might resign "soon" to better allow her to provide care for her mother. Transcript at 20. The human resources generalist spoke to claimant that day about whether she planned to leave work, and claimant said she was considering leaving work before the end of 2016. Sometime during the week of December 11, 2016, claimant obtained paperwork from the employer's human resources department that would allow her to request a leave from work under the Family Medical Leave Act (FMLA) to care for her mother. On December 16, 2016, the human resources generalist spoke to claimant and asked claimant if she was going to resign, and claimant stated she thought she was going to continue working, but probably would be requesting a FMLA leave to allow her to care for her mother.

(3) On Friday, December 23, 2016, the employer distributed bonus checks. That day, claimant discovered that the bonus check she had received was significantly less than those received by some other employees. Claimant was "super upset." Transcript at 20. Later that day at around 10:15 a.m., claimant met with the human resources generalist and expressed her displeasure with the amount of her bonus. Claimant told the generalist that she was going to leave work by the end of the year. The generalist told claimant not to make a "rash" decision about her plans, but to wait until she "calmed

down.” Transcript at 20. At around 1:00 p.m. on December 23, 2016, the employer’s operations manager told the human resources generalist that claimant had asked him for a piece of paper so she could write a resignation letter. At approximately 1:30 p.m., the employer’s owner contacted the human resources generalist and told the generalist that claimant had stated to her that she was going to resign. The owner told the generalist to give a resignation form to claimant. The generalist delivered the resignation form to claimant that day and told claimant she needed to complete and sign it to finalize her resignation.

(4) On the next work day, December 27, 2016, the human resources generalist met with claimant to discuss her planned resignation. Claimant told the generalist that she had completed and signed the resignation form the generalist had given to her, but had left it at home. The generalist told claimant she could provide another form to her and that claimant could complete and sign it during that meeting. Claimant did so, filling in her name and identifying information and stating that she was resigning due to discrimination and harassment. Exhibit 1 at 2. Claimant signed the resignation form. When, in claimant’s presence, the generalist reviewed the resignation form, the generalist told claimant that she had understood the reason for claimant’s resignation was the need to care for her ill mother and not discrimination and harassment. Claimant asked if the employer was “firing” her, and the generalist told claimant that the employer was not discharging her and that was not the purpose of the meeting. Claimant stated that she “understood.” Transcript at 26. The generalist asked claimant to explain the reasons she gave on the form for resigning and claimant said she believed she was discriminated against because she had not received a raise in six years. Claimant also recounted several alleged incidents in which she thought she had been harassed, none of which occurred later than 2015 and only one of which was mentioned in claimant’s personnel file.

(5) Claimant voluntarily left work on December 27, 2016.

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

Claimant contended that the employer discharged her on December 27, 2017 while, in contrast the employer contended that claimant voluntarily left work on that day. Transcript at 5, 19-21. Accordingly, the first issue this case presents is the nature of claimant’s work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant vigorously disputed that she ever told anyone, including the employer’s owner or the operations manager, that she planned to leave work as a result of her mother’s illness. Transcript at 12, 32, 34. Claimant also contended with equal vigor that she told the human resources generalist when she met with her on December 27, 2016 that she did not want to leave work, and that she filled out and signed the resignation form because she felt “pressured,” apparently by the generalist’s assumption that she would sign it. Transcript at 7, 8. However, claimant did not present any evidence from which it can reasonably be inferred that she completed and signed the resignation form due to insistence, coercion, compulsion or the like that was exerted on her by the generalist. Indeed, the reasons she supplied on the form for quitting were not flattering to the employer and would not have been those that would be expected if she felt pressed into resigning by the employer. On this record, whatever her reasons for

doing so, it appears most likely that claimant completed and signed the resignation of her own volition and not as a result of any overarching compulsion that the employer exerted on her. Claimant's work separation was a voluntary leaving on December 27, 2016, the date she completed, signed and submitted the resignation form to the employer.

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.

Because claimant contended she did not leave work, she did not supply any reasons for why she might have done so. However, it can be inferred from the record that claimant might have quit because of discrimination and harassment she perceived in the workplace or because of the need to care for her mother. As regards discrimination, the only evidence that appears in the record is that claimant had not received a promotion or a raise since approximately 2011. Transcript at 27, Exhibit 1 at 4. There are many neutral work-related reasons why an employee would not be promoted or given a raise and the mere fact that claimant received neither is not, alone, sufficient to show that she was discriminated against in the workplace. As regards the harassment that claimant alleged, claimant testified at hearing that she would have continued to work despite its occurrence. Transcript at 16, 17. As well, claimant did not describe any incidents of harassment that occurred after 2015, or in the last one to two years of her employment. Transcript at 15. Based on claimant's testimony, the harassment alleged was too remote in time to constitute a precipitating reason for her decision to leave work and, by her own testimony, was not of a sufficient magnitude to constitute a grave reason for her to leave work.

As regards, a need to care for her mother, claimant did not present sufficient evidence to show that, if it was the reason that motivated her resignation, she had no alternative other than to leave work. By obtaining the FMLA paperwork that she needed to have a leave authorized, claimant showed that she was aware that such an alternative to quitting was available to her had she pursued it. On these facts, a reasonable and prudent person would not have left work for the ostensible reason of caring for her mother until she first had pursued obtaining a FMLA leave and was unsuccessful in doing so, or she reasonably thought that such a leave would for some reason not allow her to provide the care that her mother needed. Because claimant did not present evidence showing that pursuing such a leave would have had a futile result, claimant did not show that it was not a reasonable alternative to leaving work when she did.

Claimant did not meet her burden to show good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-80079 is affirmed.

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

DATE of Service: May 22, 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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