

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0467

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 105154). Claimant filed a timely request for hearing. On March 31, 2017, ALJ Monroe conducted a hearing, and on April 7, 2017, issued Hearing Decision 17-UI-80607, affirming the administrative decision. On April 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Keith Rohrbough, an attorney, employed claimant as a legal assistant from February 2, 2012 until January 3, 2017. Claimant's employer and several other attorneys were members of a consortium that contracted with the state of Oregon to provide legal services; the contract was renewed every two years.¹ If any one of the attorneys in the consortium engaged in unprofessional conduct or misbehaved, it could result in the state deciding to terminate the contract.

(2) When claimant began her work for the employer, she became aware that he had an intimate relationship with a woman to whom he referred as his mistress. (Claimant's employer was married to another woman).

(3) Beginning in April 2016, the employer's mistress and other individuals regularly spent nights in the employer's office. The presence of the people in the office whom claimant did not know made claimant afraid for her personal safety. In addition, she was concerned about the possibility that individuals sleeping in the office might access the employer's files, which contained confidential legal materials; the files were kept in unlocked filing cabinets. Claimant understood that her employer had an ethical obligation to maintain the confidentiality of these files. When claimant complained to her employer about the mistress and other individuals who spent nights in the office, her employer told her not to worry and that he would "take care of it." Audio recording at 19:00.

¹ It is unclear from this record what type of legal service the consortium contracted with the state to perform.

(4) During the time claimant worked for the employer, she regularly found items such as beer bottles, air mattresses, and various “messes” when she came to work in the morning. Audio recording at 115:51, 21:02. On occasion, claimant walked in on her employer having sexual relations with his mistress in his office. Audio recording at 25:24. On another occasion, an individual in a neighboring office confronted claimant and her employer, asking “who was the guy who came out of [the employer’s] office with a rifle?” When claimant asked her employer about this individual, her employer told her not to worry about it. Audio recording at 21:02.

(5) Because the employer regularly left work early to go to a bar, attorneys and other callers often complained to claimant about their inability to contact the employer. Claimant found it stressful to have to listen to and attempt to resolve these complaints. On a number of occasions, when the head of the consortium in which the employer participated called and claimant told him her employer was unavailable, the consortium head would then ask if the employer was at the bar, a fact which claimant would confirm. Audio recording at 34:11.

(6) In approximately August or September 2016, claimant attempted to talk to her employer about the problems she was experiencing in the office, and the employer’s behavior, which claimant believed was unprofessional and unethical. The employer was unwilling to listen to claimant’s concerns, however, and made no changes in his behavior.

(7) In October 2016, claimant’s doctor diagnosed her with anxiety, which he found was caused by her stressful situation in the workplace. Her doctor told claimant that if she could not obtain resolution of the problems she faced at work, she needed to find a new job because the stress she was experiencing would eventually cause her to “snap.” Audio recording at 36:49. The doctor prescribed an anti-anxiety medication for claimant.

(8) On December 27, 2016, when claimant reported for work, she found an unknown man asleep on a couch. Claimant also noticed a smell of marijuana in the office. The man woke up, and began screaming at claimant. When claimant asked the man who he was and why he was in the office, the man responded that he was supposed to be gone before claimant arrived. Audio recording at 22:43. Claimant called her employer and complained about the man in the office; her employer told her not to worry, and that the man should have been gone before claimant arrived at the office. Audio recording at 12:27. Claimant subsequently learned that the unknown man was the oldest son of the employer’s mistress.

(9) On December 30, 2016, the employer’s mistress sent an offensive personal message to claimant’s Facebook social media account. When claimant complained to her employer about the message, her employer told her not to worry about it, because his mistress was drunk. Audio recording at 16:26.

(10) On January 3, 2017, claimant attempted to talk to her employer about the problems she was experiencing in the workplace. The employer told her that he was not going to discuss these matters, and that claimant needed to be “civil” to anyone who came into the office. Audio recording at 17:05. Also on January 3, claimant quit her job because she could no longer tolerate the stressful work environment caused by the employer’s behavior, which she believed was inappropriate and unprofessional.

(11) After claimant quit her job, the head of the consortium in which her employer participated interviewed her. The consortium head agreed that the conduct of claimant's employer was problematic. Prior to the exit interview, claimant had not spoken directly to the consortium head about the difficulties she was experiencing in the workplace. Audio recording at 30:55.

(12) Claimant's anxiety diminished after she quit her job. She no longer needed to take any anti-anxiety medicine.

CONCLUSION AND REASONS: We disagree with the ALJ, and conclude that claimant voluntarily left work with 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.

The ALJ concluded that although claimant was "understandably upset about the periodic workplace conditions created by [the employer's] personal choices and behavior," her "personal disagreement with how the employer conducted his business did not provide a reason of such gravity that her only alternative was to quit." Hearing Decision 17-UI-80607 at 2. The ALJ also concluded that claimant had the "reasonable alternative of notifying the managers of the attorney consortium regarding her concerns about [the employer's] conduct prior to doing so in her exit interview..." *Id.* We disagree.

Claimant quit her job not because she had a "personal disagreement" with the employer's conduct of his business, but because she was exposed to working conditions that were offensive, unsafe, and interfered with her ability to perform her work as a legal assistant. Claimant's personal safety was threatened by the individuals who spent the night in the employer's office – one of whom screamed at her when she woke him up and another who apparently threatened an individual in a neighboring office with a rifle. Claimant was offended that she had to prepare a law office for the work day by cleaning up beer bottles, mattresses and other items that were apparently left over from after-hours activities in the office and that the employer had intercourse with his mistress during work hours in areas of the office where claimant performed her work. She was further offended by the hostile personal message she received from her employer's mistress. Her employer's regular absences from the office burdened claimant with the task of trying to placate attorneys and clients who were angry about her employer's unavailability. Based on this record, we find that claimant faced a grave situation in the workplace.

We also conclude that complaining to the manager of the consortium in which the employer participated was not a reasonable alternative. Although the consortium manager was aware that the employer regularly left the office to go to a bar, the manager made no attempt to stop this activity. The manager's failure to take any action to control the employer's behavior, despite his knowledge of the employer's misconduct, indicates that complaints to the manager about the employer's conduct would probably have

been futile. In addition, there is no evidence that the consortium manager had any authority to influence or direct the employer's behavior toward claimant. While the manager might have been able to end the employer's participation in the consortium, such an action would only have changed the type of work available to and performed by the employer. There is no indication that such an action would have had any effect on the employer's behaviors which claimant found to be unprofessional and inappropriate.

A reasonable and prudent person, who faced the conditions that claimant endured at work and for whom attempts to obtain improvement in these conditions would have been futile or ineffective, would conclude that she had no alternative but to quit her job. Claimant therefore voluntarily left work for good cause and is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-80607 is set aside, as outlined above.

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

DATE of Service: May 10, 2017

NOTE: This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits, if owed, may take from several days to two weeks for the Department to complete.

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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