

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0474

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 102317). Claimant filed a timely request for hearing. On April 13, 2017, ALJ Logan conducted a hearing, at which the employer did not appear, and on April 20, 2017 issued Hearing Decision 17-UI-81470, affirming the Department's decision. On April 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sweet Home School District #55 employed claimant as a probationary teacher from August 2015 to February 3, 2017.

(2) In approximately February 2016, a student and her parents falsely accused claimant of disparaging the student. The employer found the complaint unfounded. Later in 2016, that family made two additional complaints that claimant mistreated their daughter. The employer also found those complaints unfounded. The parents made a third complaint to police that claimant assaulted their son by pulling his hair during a field trip; an article about the accusation appeared in the local newspaper.

(3) In November 2016, an administrator and a police officer pulled claimant from his classroom in view of other teachers and students to tell him that he was to attend a meeting about the alleged assault with the principal and superintendent the following week. The administrator attempted to send claimant back to his classroom with instructions to avoid those students; claimant objected to being in a classroom with the student he was accused of assaulting and asked to leave early. The employer agreed, but escorted him out of the school with the police officer within the view of students and teachers.

(4) Ultimately, surveillance video conclusively established that claimant had not pulled the student's hair. Around that time period, claimant asked the principal who supervised him what he thought about claimant's future; the principal replied, "You don't fit in with my vision." Audio recording at 12:15.

(5) In December 2016, the principal gave claimant a performance evaluation that downgraded his performance in certain areas as compared to a 2015 evaluation. Claimant concluded that the principal was laying the groundwork to justify ending claimant's employment at the end of the school year.

(6) Claimant was concerned that the students and their parents would continue to make unfounded accusations and gossip about him. One of the students' parents was also employed by the employer; claimant felt that his coworkers were unwelcoming toward him, possibly because of their relationship with the students' parent. He was also the subject of gossip and rumors among students and teachers.

(7) Claimant's union was unable to help him. Although the employer investigated the parents' complaints and cleared him of wrongdoing, the employer had embarrassed him by allowing police to pull him from his classroom. The employer had also been unsupportive of him by dismissing his ideas and telling him not to speak in meetings and not to interact with the students who complained about him.

(8) By February 2017, claimant's situation had been escalating for a year and he anticipated things would continue to escalate. Claimant was experiencing a heavy workload, ill health, and emotional difficulty related to the death of a close relative, all of which he struggled to manage, and the stress of those issues was exacerbated by his worry over the situation at work. He felt he could not handle additional escalation of his problems at work, and, on February 3, 2017, claimant quit work.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant quit work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when 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.

The ALJ concluded claimant quit work without good cause because he felt unsupported by the employer. Hearing Decision 17-UI-81470 at 3. Although we agree with the ALJ that claimant testified he felt unsupported by the employer, the preponderance of the evidence shows that the reason claimant quit work when he did was because his poor working conditions had been escalating for a year, he reasonably anticipated they would continue to escalate, and he could not withstand them any longer.

At the time claimant quit work, students and their parents had lodged four unfounded complaints that claimant had either behaved inappropriately with their children or, in one instance, assaulted their child. He had been told by the principal that he did not fit in with his vision for the school, told not to speak in meetings, was the subject of a local newspaper article about the assault accusation, was the subject of rumors about his behavior and work by students and adults, was pulled from his classroom during a school day and ultimately escorted from the building by a police officer in view of other teachers and students, and was instructed not to speak with the students whose parents had complained about him.

The situation had been escalating for a protracted period and there is little evidence to suggest that the situation had ended, nor when the situation was expected to end, during which time claimant was not merely uncomfortable around the students who had complained about him, he was effectively barred from doing his job with respect to any situation involving them.

Although the employer had investigated the complaints about claimant and cleared him of wrong doing in each of the four instances, it appears on this record that there was little else the employer could do to aid claimant or alter his circumstances. The employer was under no obligation to join him in sending the “cease and desist” letter, could not control what the students told their parents about claimant, could not prohibit the parents from reporting allegations of child abuse or mistreatment by a teacher, and, as a matter of common sense, could not refuse to investigate such reports when they were received, meaning that as long as those students or their parents complained about claimant the situation would continue. The union told claimant there was nothing they could do to assist him. Moreover, claimant was a probationary teacher who could lose his job at the end of the school year if the employer decided not to renew his contract, and the principal had already decided claimant did not fit with his vision.

Given those circumstances, which compounded the effects his own ill health and emotional distress after the death of his close relative were having on him, any reasonable and prudent person would conclude that he had no reasonable alternative but to quit work rather than continue subjecting himself to those circumstances while awaiting what he reasonably believed was likely to be his inevitable discharge at the end of the school year. Claimant therefore quit work with good cause. He is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-81470 is set aside, as outlined above.

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

DATE of Service: May 11, 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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