

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0533

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 92357). The employer filed a timely request for hearing. On April 27, 2017, ALJ Murdock conducted a hearing, and on May 3, 2017, issued Hearing Decision 17-UI-82031, reversing the administrative decision and concluding that claimant voluntarily left work without good cause. On May 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Marble Center employed claimant as a customer service representative from April 11, 2016 until February 21, 2017. Claimant worked Monday through Friday, from 9 a.m. to 5 p.m.

(2) During the first few months claimant worked for the employer, she and a coworker, L,¹ developed a poor working relationship. At the request of her supervisors, claimant and L went out for coffee and attempted to resolve their conflicts. This attempt was unsuccessful, however, and their working relationship continued to be poor.

(3) Sometime during the week of February 13 through 17, 2017, claimant was assisting two customers when a third customer entered the employer's facility. Because no other employee was available, claimant asked L to assist the third customer; L responded rudely to claimant's request, but did help the customer. After assisting the customer, L became angry at claimant, telling her that claimant was in charge of customer service and should have handled the situation because L was very busy. Both claimant and L began yelling at one another. The employer's owner intervened in the argument and told L to stop yelling. Audio recording at 18:02.

(4) On February 17, 2017, L and the employer's owner asked claimant to find a piece of granite, an item with which claimant had been working but which no one could find. Claimant remained at her desk,

¹ "L" is a pseudonym.

checking her files and looking for a photo of the material. L was angered by what she believed to be claimant's refusal to look for the granite, and she and claimant began yelling at one another. The owner's vice-president intervened in the dispute, explained that he needed to separate the two, "just to let all heads cool down," and told L to step outside. Audio recording at 27:53. The vice president then spoke to L, who told him that claimant had refused to look for the granite, and had told L that L was an "awful person." The vice president told L just to let it "blow over" and that he would deal with the matter on Monday, February 20. Audio recording at 28:16. Claimant was upset that the vice president never spoke to her about the incident.

(5) On February 20, 2017, claimant contacted the vice president and said she would be absent from work on that day. Claimant never returned to work for the employer. On February 21, 2017, claimant's mother hand-delivered a letter to the employer in which claimant explained that she was quitting her job, effective immediately. Claimant voluntarily left work because she believed that L had created a hostile work environment for her, and also believed that the employer was not providing her with appropriately scheduled lunch and rest breaks periods to which she was entitled by law.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that 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 quit her job because she believed that her coworker L had created a hostile work environment, and because she believed that the employer did not provide her with the lunch and rest break periods to which she was entitled by law.² In regard to her interactions with L, claimant asserted that at the time she voluntarily left work for the employer, L was yelling at her several times a week. Audio recording at 11:56. Claimant also contended that during an incident that occurred approximately a week before she quit and an incident that occurred on February 17, L engaged in angry outbursts that were unprovoked by anything claimant did. Claimant also asserted that although she and the vice president talked about problems she and others had in getting along with L about a month before she quit her job, the vice president did nothing to address the problem. Audio recording at 15:53. The vice president, however, testified that he never heard L yelling at claimant on a regular basis, as claimant alleged, that he was never notified that claimant considered her work environment to be hostile until he received her letter of resignation, that the February 17 incident resulted from claimant's refusal to assist L and her coworkers, and that both claimant and L were yelling at one another during this dispute. Audio

² An employee who works an 8 hour shift, as did claimant, is entitled to receive a duty-free meal period of not less than 30 minutes and must have the meal period scheduled after the end of the third hour worked and completed before the beginning of the sixth hour of work. OAR 839-020-050(2)(a) and (d) (January 1, 2014). An employee is entitled to receive a duty-free rest period of 10 continuous minutes, scheduled in approximately the middle of each four hour segment of work performed. OAR 839-020-050(6)(a).

recording at 27:00, 30:14. In regard to her lunch and rest breaks, claimant asserted that she did not receive any 10 minute breaks, and that her lunch break was often scheduled during the last hour of her 8 hour shift, from 4 to 4:30 p.m. The employer's vice president, however, testified that he was unaware of any problem with the scheduling of claimant's lunch break, that the volume of the employer's business was such that employees could take rest breaks as needed, and that he was unaware of any problem with employees not receiving their rest breaks.

The evidence regarding claimant's working conditions is equally balanced. As the party with the burden of persuasion, claimant therefore failed to meet her burden to show that she experienced a work environment in which she was abused by a coworker, was denied rest breaks and, and was not given a lunch break scheduled in accordance with the applicable rule. Claimant also failed to demonstrate that the employer was aware of these problems, but refused to address them. Claimant therefore failed to demonstrate that she faced a grave situation that left her no reasonable alternative but to voluntarily leave work for the employer.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-82031 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, 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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