

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0569

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 160357). Claimant filed a timely request for hearing. On April 24, 2017, ALJ S. Lee conducted a hearing, and on April 26, 2017, issued Hearing Decision 17-UI-81893, affirming the administrative decision. On May 9, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's argument to the extent it was relevant and based on evidence in the record.

FINDINGS OF FACT: (1) All that Glitters Jewelry and Loans employed claimant as a pawnbroker from December 26, 2011 until February 15, 2017.

(2) Throughout claimant's employment, the employer received numerous complaints from customers regarding claimant's discourteous behavior. In 2015, the employer sent claimant to an anger management class; claimant completed the course and the employer believed his behavior improved. Audio recording at 31:00.

(3) In October 2016, a regular customer of the employer's Salem, Oregon store where claimant usually worked, came to the store and engaged in an angry altercation with claimant. The customer, who was intoxicated, yelled at claimant and used foul language. Claimant was upset that the assistant manager did nothing to assist him in this incident.

(4) On February 3, 2017, a customer came to claimant's store with a pawn ticket on an item for which the customer's mother had received a loan. The customer's mother was in the hospital and the customer

asked claimant to renew the loan in his mother's name. Claimant attempted to explain that he could not do that, and that the loan would have to be renewed in the customer's name and not that of his mother. The customer became angry with claimant, yelled at him, and used foul language. Claimant believed that the assistant manager, who was present in the store during this altercation, did nothing to assist him with the customer.

(5) The customer involved in the February 3 incident complained to the employer's managers that claimant had been rude and abrupt in his dealings with the customer. The employer's general manager and the manager of the Salem store met with claimant on February 15, 2017 to discuss the February 3 incident and other complaints they had received about claimant. The managers told claimant that they were changing his schedule so that he would be assigned to work the same shifts as the store manager. The intent of this change was to give the store manager an opportunity to observe claimant's interactions with customers, determine if the complaints about claimant's behavior were well-founded, and coach claimant in providing better customer service, if necessary. Audio recording at 31:13. Claimant protested the change in his work schedule as unfair punishment for the February 3 altercation; he asserted that the customer was at fault for what happened on that date and not claimant. The general manager explained that the schedule change was being made so that the store manager could observe claimant's behavior, and claimant again insisted that the change in his schedule was unfair. Claimant then left the meeting and left the workplace.

(6) After leaving the workplace on February 15, claimant returned home and prepared and sent an email to the employer's human resources representative in which he quit his job, effective immediately. In the email, claimant stated that "I am choosing not to give a two week notice as I do not trust the [manager of the Salem store]. I have witnessed firsthand her telling multiple lies to [the general manager] and I simply have no faith that she would not cause a problem for me in the next two weeks if I were to stay." Audio recording at 29:40 to 30:02.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

Nature of the work separation: If the employer 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At the hearing, claimant asserted that the employer's general manager discharged him at the February 15 meeting by telling claimant that the general manager wanted claimant's resignation "today." Audio recording at 11:35. The employer, however, denied that the general manager ever directed claimant to submit his resignation and contended that claimant quit his job by walking out of the meeting and subsequently send an email in which he resigned.

We do not find plausible claimant's assertion that he was willing to continue working for the employer, even after the change in his schedule. If claimant had truly wished to remain employed, it is probable

that he would have questioned the general manager's insistence that he resign, or otherwise given some indication of his desire to continue working at the February 15 meeting. Claimant did not do so, however. Instead, he protested the schedule change as "unfair" and "punishment" for the February 3 altercation with a customer and abruptly left the meeting and the workplace. Claimant's behavior and statements at the meeting indicate an unwillingness to continue working for the employer. Further evidence that claimant did not want to return to work after February 15 was provided by his email in which claimant stated that he distrusted his supervisor and refused to work the customary notice period because he had "no faith that she would not cause a problem for me" if he worked an additional two weeks. Audio recording at 29:40 to 30:02. Based on this record, we find it more likely than not that claimant did not want to continue working for the employer after the February 15 meeting. Claimant's work separation was therefore a voluntary leaving.

Voluntary Quit: 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). 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 voluntarily left work because he believed that the employer had unfairly changed his schedule on account of a complaint that resulted from a February 3 interaction claimant had with a customer. According to claimant, this negative interaction was the fault of the customer and not claimant, and claimant believed the employer should not have tried to punish him by assigning him to work the same shifts as his supervisor. Claimant's distrust of his supervisor also contributed to his decision to quit his job. Claimant provided no reasons for opposing the schedule change, other than his beliefs that the change was unfair and that his supervisor was dishonest. As the ALJ correctly pointed out, a schedule change is the prerogative of an employer, and not an unreasonable management action. Hearing Decision 17-UI-81892 at 4. We do not find that claimant's changed schedule and the requirement that he work the same shifts as his supervisor constituted a grave situation for claimant.

Even if the changed schedule did create a grave situation for claimant, he had reasonable alternatives to quitting his job. He could have attempted to work the new schedule and taken the opportunity to demonstrate to the store manager that his behavior with customers was appropriate and that complaints about his rudeness were unfounded. If he believed that the store manager continued to treat him unfairly, he could then have reported his concerns to the employer's human resources representative, who had assisted him in resolving workplace problems in the past. Audio recording at 39:36. The employer's willingness to send claimant to an anger management class in 2015 indicated its desire to help claimant succeed in his position as pawnbroker. A reasonable and prudent person, who wanted to remain employed, would accept a changed schedule and attempt to resolve any problems that developed with supervision under this schedule with resources he had previously utilized to successfully resolve workplace issues – the employer's human resources representative.

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

DECISION: Hearing Decision 17-UI-81893 is affirmed.

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

DATE of Service: June 2, 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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