

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0583

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 without good cause (decision #100253). Claimant filed a timely request for hearing. On May 1, 2017, ALJ Janzen conducted a hearing, and on May 2, 2017, issued Hearing Decision 17-UI-82373, affirming the Department's decision. On May 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Form Systems, Inc. employed claimant, last as a project manager, from September 30, 2016 to March 2, 2017.

(2) The employer initially hired claimant as an information technology (IT) director, but in early January 2017, the employer's co-owners concluded claimant was not qualified for the position as they had envisioned it. On January 6, 2017, the co-owners met with claimant and informed her that she was being terminated for that reason but offered her a severance agreement that included a cash payment. Claimant inquired if she could stay on at another position for less money, but the co-owners declined. However, after claimant left the office, the co-owners changed their minds and requested that she come in to discuss another position. On or about January 10, the parties met and agreed that claimant would remain with the employer as a project manager for reduced compensation.

(3) Over the next two months, claimant worked in her new capacity as a project manager. However, on March 1, 2017, the employer placed claimant on a performance improvement plan for 30 days and detailed "Areas of Concern" and "Actions Required" therein for her continued employment in her position. Exhibit 1. The employer immediately saw some improvement in claimant's work performance in connection with the described "areas of concern."

(4) On March 2, 2017, claimant inadvertently discovered a confidential internal digital file intended only for the co-owners' eyes. The digital file contained notes made by one of the co-owners concerning claimant's job performance as IT director months earlier that was the basis for their intended termination of her on January 6. Two of the notes sarcastically complimented claimant on her ability to "Google

stuff” and play “Words with Friends,” on online game, at work. Exhibit 1. Claimant found those and other notes to be demeaning and hurtful, emailed the file to herself and left work that day around noon. Claimant concluded she was no longer willing to work for the employer, spoke to a lawyer, and on March 3, sent the co-owner in question an email demanding \$100,000 by March 10, 2017 to resolve what she considered to be an actionable claim against the employer. The co-owners met and decided they were unwilling to meet her demand but would be willing to allow claimant to return to work as project manager if they met and ironed out their differences over the notes concerning her performance in the prior position. However, between March 3 and March 8, claimant never returned to work or contacted the employer.

(5) On March 8, 2017, the employer sent claimant a letter notifying her that it was terminating her employment based on her lack of attendance or notice since March 3 in violation of its attendance policy.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

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; 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, the separation is a discharge. OAR 471-030-0038(2) (August 3, 2011). Although the employer sent claimant a termination letter on March 8, 2017 based on her violation of the employer’s attendance policy, both parties agreed at hearing that claimant quit on March 2, 2017. Exhibit 1; Transcript at 4-5, 17. Because claimant could have continued to work for the employer for an additional period of time but was unwilling to do so after March 2, the work separation was a voluntary leaving on that date.

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant left work because she was offended by some of the employer’s notes concerning her job performance in her prior position. Although some of the notes were not complimentary and the co-owner regretted having written them even though they only were intended for the other co-owner, claimant only experienced hurt feelings and perhaps some embarrassment resulting from her discovery of the notes. There is no dispute that claimant could have maintained gainful employment with the employer had she chosen to discuss her discovery and dissatisfaction with the co-owners, who had seen claimant make progress as a manager in the day or two since she signed the performance improvement plan. Transcript at 21. Under the circumstances, claimant failed to show that her concerns constituted reasons of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would conclude she had no reasonable alternative but to quit and immediately and become unemployed.

Claimant had the burden to show that she quit work when she did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet her burden and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-82373 is affirmed.

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

DATE of Service: June 7, 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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