

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0622

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 82854). The employer filed a timely request for hearing. On May 8, 2017, ALJ Kangas conducted a hearing, and on May 9, 2017 issued Hearing Decision 17-UI-82979, concluding claimant voluntarily left work for the employer without good cause. On May 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) BW Brody employed claimant performing accounts payable data entry work from September 26, 2016 to March 8, 2017.

(2) Claimant considered the controller disrespectful and was “tired of” it. Audio recording at ~ 17:00. On March 8, 2017, the controller identified an error in claimant’s work and told claimant she was very concerned about something and wanted to talk. Claimant thought she knew what the controller wanted to talk about and said she would prefer that someone else joined them for the conversation. Within five minutes after the controller approached claimant, claimant stood up, made comments to the effect that she did not want to do the job anymore, was leaving and was “done,” and left the workplace at approximately 10:00 a.m., well before the end of her scheduled workday. Audio recording at ~ 46:25.

(3) Before claimant left, the controller asked claimant if she was quitting and, if so, to give the controller her keys and the garage remote before leaving. Claimant refused, stating that she wanted to give them to the associate partner instead. The associate partner had hired claimant and they got along well.

(4) Shortly after leaving the workplace, claimant called the associate partner. The associate partner offered to meet with claimant that afternoon or the following morning. Claimant sounded upset so the associate partner tried to calm her and make her feel better. Claimant made it “very clear” in her conversation with the associate partner that she did not want to work for the employer anymore and wanted to turn in her keys, and “made it very clear that it wasn’t the right position for her and she wasn’t happy there.” Audio recording at 43:30-44:20. Claimant agreed to meet the associate partner the following morning.

(5) On March 9, 2017, claimant went to the associate partner's office and handed the associate partner her keys and the remote. Claimant did not ask to continue working or say that she had not quit her job while speaking with the associate partner. The associate partner told claimant she was sorry the employment had not worked out for claimant and wished her the best of luck. Claimant asked if the associate partner had spoken with the controller; the associate partner replied that the controller had tried to work with claimant, claimant had tried to work with the controller, and that they had all tried. Claimant collected her personal belongings from her desk, some of which the employer had gathered from the kitchen area and placed on her desk, and left the workplace.

(6) Almost immediately after leaving, claimant called the associate partner and asked if she had been fired. The associate partner told claimant she had not, and said that she had quit work.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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. 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).

Claimant did not expressly tell the employer that she "quit," and the employer did not expressly tell claimant that she was fired. The parties' intent as to the employment relationship must therefore be inferred from what they did say and their actions. Claimant argued at the hearing that the employer discharged her; she argued that she had told the controller she was not quitting her job and had no intention of quitting her job. Audio recording at ~ 15:00. While it might well be that claimant refused to quit or denied quitting when speaking with the controller, claimant is the one who chose to abruptly leave work with much of her workday remaining, stating she was "leaving" and "done." When claimant spoke with the associate partner later that day, claimant "made it very clear" to the associate partner that she no longer wanted to work for the employer and wanted to meet with the associate partner for the purpose of returning her keys to the business. When claimant entered the associate partner's office the following morning, she gave the associate partner her keys and garage remote first thing, without waiting for the associate partner to say she wanted claimant to return them, and without telling the associate partner that she wanted to return to her duties, did not quit, did not want to leave, or wanted to work things out with the controller and remain employed. When the associate partner then told claimant that she was sorry claimant's employment had worked out and wished claimant luck with her future, claimant did not ask the associate partner what she meant by that, ask if she was being fired, or tell the associate partner that she had not quit her job or had reported to work with the intent of sitting down at her desk to work after she spoke with the associate partner. Instead, claimant handed over her keys and removed her personal belongings from the workplace.

At the time claimant chose to leave work and spoke with the associate partner, it is more likely than not that she could have continued to work for the employer for an additional period of time, whether by remaining at work for the rest of her scheduled workday or, more likely, by "making it clear" to the associate partner that she had not quit, did not want to leave her job, and refusing to return her keys and the garage remote to the employer unless the associate partner asked for them or told her she was fired.

Claimant testified she told the controller either that she did not want to quit work or that she had not quit work; assuming that is the case, claimant likewise could have told the associate partner at any point that she did not want to quit or had not quit work. Instead, claimant “made it clear” that she was “done” working for the employer, choosing to leave because “it wasn’t the position for her and she wasn’t happy.” Claimant’s work separation was, therefore, likely the result of a voluntary leaving.

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 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 event that immediately preceded claimant’s decision to leave work, and therefore the event that likely caused her to quit, was that the controller approached claimant because she was very concerned about an error that claimant had made and wanted to discuss it. Claimant thought she knew what the controller wanted to discuss and did not want to discuss matters unless another person was present because she was “so tired” of the controller being disrespectful to her. Claimant did not elaborate about how the controller had demonstrated disrespect for her on March 8th or prior occasions, nor did she assert or show that the way the controller had approached her on March 8th demonstrated disrespect or was otherwise hostile or abusive toward claimant. Claimant had worked for the employer for only a few months at the time she quit work, sometimes had difficulty learning her duties, and the controller was her direct supervisor. There is nothing inherently grave or unreasonable about a supervisor needing to discuss an error with the person she supervised, and claimant has not shown that no reasonable and prudent person would have continued to work for the employer for an additional period of time based on her March 8th interaction with the controller. Nor did she show that any other grave circumstance on March 8th or March 9th prompted her to decide she had to quit work at the time she did.

Claimant voluntarily left work without good cause. She is therefore disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-82979 is affirmed.

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

DATE of Service: June 12, 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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