

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0633

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 143834). Claimant filed a timely request for hearing. On May 5, 2017, ALJ Snyder conducted a hearing, and on May 12, 2017, issued Hearing Decision 17-UI-83310, affirming the Department's decision. On May 19, 2017, claimant filed an application for review of Hearing Decision 17-UI-83310 with the Employment Appeals Board (EAB). On May 22, 2017, ALJ Snyder issued Amended Hearing Decision 17-UI-83965, amending Hearing Decision 17-UI-83310 only by correcting a typographical error therein.¹

Claimant's written arguments contained information that was not offered into evidence during the hearing, did not explain why she was unable to present the information at that time or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. She also failed to certify that she provided a copy of her written arguments to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Accordingly, under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090, EAB performed a *de novo* review of the hearing record, including admitted exhibits, but without considering claimant's written arguments.

FINDINGS OF FACT: (1) Cherry Hill Furniture & Upholstery employed claimant as the office manager from January 5, 2016 to March 13, 2017. Claimant was a salaried employee and equal part-owner of the employer.

(2) As the office manager and part-owner of the business, claimant had access to the business bank account and an ATM card connected to the account.

¹ Because Amended Hearing Decision 17-UI-83965 is not substantively different from Hearing Decision 17-UI-83310, EAB has treated claimant's application for review of Hearing Decision 17-UI-83310 as a request by claimant to review Amended Hearing Decision 17-UI-83965.

(3) On March 13, 2017, claimant's business partner angrily confronted claimant after she discovered that claimant had withdrawn a significant amount of money out of the business account for her personal use without informing her and after reporting that there were insufficient business funds available to purchase necessary supplies. Claimant believed that it was not uncommon for a business partner to use business funds for personal use and that ultimately the distribution of business funds would be made equal between the partners. Claimant's partner told her that she no longer trusted claimant and that she would agree to allow claimant to continue working as office manager at the same salary and benefits if claimant gave up the ATM card and removed her name from the business account and agreement for a one-year period. Claimant's partner added that if, after the one-year period, trust between the two of them had been restored, they could renegotiate their business partnership. Claimant disagreed with the proposal but continue to work at the employer that week.

(4) On, Monday, March 20, 2017, claimant reluctantly agreed to give up her ATM card and take her name off of the business agreement. She went to the bank with her partner and removed her name from the business account. After returning to the business that day, claimant removed her belongings, left her key to the business, took the cat that lived there and left work. Claimant never returned to work as the office manager.

(5) During the weeks that ensued, claimant hired an attorney who attempted to resolve the business dispute between the parties. Exhibit 1.

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

At hearing, claimant asserted she was "fired" but her partner asserted that claimant quit. Audio Record ~ 21:00 to 22:00. Accordingly, the first issue to be addressed is the nature of the work separation. 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 by the employer, the separation is a discharge. OAR 471-030-0038(2) (August 3, 2011).

Although claimant was asked to surrender part ownership of the business for at least one year, there was no dispute that claimant could have continued to work in her position as office manager, at the same salary, during that year. Claimant did not dispute the partner's testimony that after claimant left work, she explained her offer to remain as office manager to claimant's husband, who responded, "She'll take it," although claimant never returned. Audio Record ~ 48:30 to 50:00. More likely than not, because claimant could have continued to work for the employer as office manager for an additional period of time, the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

Claimant left work because after her business partner discovered claimant's undisclosed distribution of business funds to herself for personal use, the business partner demanded that claimant turn in her ATM card and refused to share ownership with her for at least one year. Although this may have created an uncomfortable working relationship between them, claimant could have accepted her partner's proposal to continue to work as office manager, at her same level of compensation, to determine if the two could again become compatible as business partners, or even refused to acquiesce to her partner's demands. At hearing, claimant asserted that her preference was to resolve the disagreement through legal counsel, but failed to explain why that could not have been attempted while she continued to work as office manager. Although she asserted that she was essentially forced out by her partner's hostility, when asked why she did not accept her partner's offer to continue working for her salary, claimant replied that she thought "[s]he [the business partner] didn't want me to come back." Audio Record ~ 47:30 to 48:40. Regardless whether or not claimant thought her business partner wanted claimant to accept the offer of continued work as an office manager, viewed objectively, accepting the offer was a reasonable alternative to abruptly quitting on March 20, 2017 and losing all compensation. Accordingly, although claimant may have been unhappy with her partner's conditions, she failed to show that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would have accepted them and continued to work for the employer as office manager for an additional period of time.

Claimant voluntarily left work without good cause. Accordingly, claimant 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: Amended Hearing Decision 17-UI-83965 is affirmed.

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

DATE of Service: June 28, 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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