

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0663

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152753). Claimant filed a timely request for hearing. On May 11, 2017, ALJ Seideman conducted a hearing, and on May 12, 2017 issued Hearing Decision 17-UI-83279, affirming the Department's decision. On May 30, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on the hearing record.

EVIDENTIARY MATTER: EAB marked documents submitted by claimant, Register Guard articles from January 25 through 28, 2017 and internet comments, a parent letter, and claimant's separation agreement as Exhibits 1 through 10. The ALJ identified and admitted the exhibits at hearing, but did not mark them. Audio Record at 1:58 to 4:23.

FINDINGS OF FACT: (1) Lane County School District # 40 employed claimant from August 2011 until January 27, 2017, last as a high school principal.

(2) On the evening of January 13, 2017, claimant was at home and was exchanging text messages with the assistant principal during a basketball game. The assistant principal had disciplined a student earlier that evening and was telling claimant about the incident. The assistant principal also mentioned that two students who formerly attended claimant's high school were at the game. Claimant and the assistant principal each made unprofessional comments about the two students; they made fun of one of the student's weight, and suggested the other student was engaged in illegal drug use during the game. Claimant assumed the conversation was private between him and the assistant principal, however, a friend to the student who was disciplined earlier in the game used a high-power camera to take photographs of claimant's text conversation with the assistant principal. Students, parents, claimant, and the employer saw the photographs.

(3) The week following January 13, claimant began discussions with his superintendent regarding potential discipline for the text messages, and the superintendent told claimant it was unlikely he would be discharged. A parent who was dissatisfied with the school's response to the incident communicated information about the incident to the media. The local newspaper published the initial story regarding the incident online on January 24 and in print on January 25, 2017. There was a strong negative reaction within the local community to the news about the January 13 incident.

(4) On January 26, 2017, claimant and the assistant principal met with their superintendent who told claimant the employer would not discharge him but that he may not be able to overcome the negative community response. Claimant met with an attorney who advised him that he might be able to avoid termination and receive progressive discipline, but that resigning would be best for the students, school, community and claimant's future employability. Claimant agreed with his attorney and elected to resign.

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

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) (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 his employer for an additional period of time.

Claimant quit work because he believed it would be difficult to effectively perform his duties as principal after his credibility was damaged by publication of a newspaper story regarding disparaging text messages he wrote regarding two former students. OAR 471-030-0038(5)(f) provides that, where the gravity of the situation experienced by the individual results from his own deliberate actions, the actions of the individual in creating the grave situation must be examined under OAR 471-030-0038(4) to determine whether good cause for leaving the work existed. We find that the public outcry to claimant's conduct and the resulting damage it apparently caused to his credibility and trust with parents and students created a grave situation for claimant. *See* Exhibits 1-9. Because the future difficulty claimant would face in performing his duties as principal resulted from the text messages he exchanged with the assistant principal, OAR 471-030-0038(5)(f) requires that we consider claimant's culpability in creating the grave situation.

Claimant knew or should have known that making disparaging comments to the assistant principal about a student's weight and implying that a student was an illegal drug user was unprofessional and could, moreover, cause additional harm if viewed by or disclosed to unintended recipients. The record contains no evidence of circumstances of such gravity that claimant had no reasonable alternative but to send sarcastic and hurtful text messages about former students merely attending a high school basketball game. In addition, in order to show good cause for quitting work, claimant must show he had no

reasonable alternatives but to quit work when he did. The record shows claimant's superintendent told claimant the employer could not discharge him for his conduct on January 13, 2017. Claimant could have continued working subject to the employer's progressive discipline and did not show that it would have been futile to do so and that no reasonable and prudent person of normal sensitivity would have quit under the circumstances.

Because claimant created the grave situation he faced and quit work without pursuing progressive discipline in lieu of quitting, he has not shown good cause for quitting work. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-83279 is affirmed.

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

DATE of Service: June 21, 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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