

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0693

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74117). Claimant filed a timely request for hearing. On May 17, 2017, ALJ Meerdink conducted a hearing, and on May 18, 2017 issued Hearing Decision 17-UI-83696, affirming the Department's decision. On June 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record. Claimant did not show that factors or circumstances beyond her reasonable control prevented her from offering that information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For that reason, EAB did not consider the new information in claimant's argument. EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) CLRM, LLC, doing business as Five Guys Burgers and Fries, employed claimant from May 2010 until March 24, 2017, last as a general manager of one of its restaurants.

(2) On January 17, 2016, the employer received an email complaint from a customer about the general manager of one of its locations; the email stated that the male general manager appeared to have intimidated one female crew member and seemed to have inappropriately touched a second female crew member. The customer did not leave any contact information with the complaint. Exhibit 1 at 4. On July 7, 2017, the employer received another email complaint about the same general manager, stating that he had looked at the customer's granddaughter "like he was undressing her with his eyes." Exhibit 1 at 6. The only contact information the customer provided was her email address. On December 2, 2016, an unidentified employee complained about the same general manager, using a customer complaint form, and stating that the general manager "makes sexual comments" and is "very perverted." Exhibit 1 at 8. No contact information accompanied this complaint. On December 3, 2016, the owner forwarded the complaint from December 2, 2017 to claimant, stating "Here it goes again *** If the employee is afraid to say their name for fear of being fired there is nothing we can do. *** The [general manager] is uber [sic] sensitive to sexual harassment so I find it had to believe what the person is saying

without giving us their name so we can talk to them.” Exhibit 2 at 9. Claimant sent a reply email to the employer’s owner, telling him, “This [alleged complaints against this manager] is getting to be soooooo lame. Sounds bogus [because the general manger was not at work at the time alleged in the complaint]. So I think it’s bull crap.” Exhibit 2 at 9.

(3) Sometime after December 3, 2017, claimant became ill with meningitis and missed several weeks of work. While claimant was away, the general manager who was the subject of the complaints on January 17, July 7, and December 2, 2016 covered for claimant and managed claimant’s location.

(4) On or about February 15, 2017, claimant returned to work part-time. Upon claimant’s return, four crew members complained about the behavior of the general manager who had been covering for claimant during her absence. Three of the crew members, who were female, stated they thought that the general manager had stared at their breasts, seemed to have rubbed against them inappropriately when passing near them and that his behavior had made them “uncomfortable.” Audio at ~14:00. A fourth crew member, who was male, also stated that he had been “uncomfortable” at the way the general manager had looked at the female crew members. Audio at ~14:20. All of these employees stated they had not discussed this behavior with the general manager or other members of the employer’s management because they feared retribution from the general manager. Claimant told the employees she would bring up the general manager’s behavior with the employer’s owner. All of these employees told claimant that they did not want to be identified as having complained about the general manager when claimant spoke to the owner or anyone else in the employer’s management.

(5) On or about February 17, 2017, claimant discussed with the employer’s owner the impressions of the crew members about the general manager’s behavior. Claimant refused to reveal the identities of the crew members and was unable to provide more specific or detailed information about the general manager’s alleged sexual harassment than what the crew members had told her. The owner told claimant he would speak with the general manager about the crew members’ complaints. When the owner spoke with the general manager, the general manager adamantly denied that he had engaged in the behavior that the crew members had described. Sometime after, the owner told claimant that the general manager had denied the allegations of the crew members and that he was not going to discipline the general manager based on the “vague general feelings” of the crew members without knowing their identities and having more concrete and specific information about the alleged behavior of the general manager. Audio at ~25:20.

(6) On March 10, 2017, claimant submitted her resignation to the employer’s owner, stating that she intended to quit effective March 24, 2017. On March 24, 2017, claimant voluntarily left work for the stated reason that the general manager had been harassing crew members and the employer had taken no actions against him.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

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) (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 her employer for an additional period of time.

At the time the crew members complained to claimant about the alleged behavior of the general manager in mid-February 2017, claimant had already dealt with several anonymous complaints against that manager and dismissed them as “bogus.” Exhibit 2 at 9. It appears that this general manager may have arguably been the object of a campaign to discredit him. It is simply not plausible that upon receiving yet more vague and impressionistic complaints against the same general manager from crew members who supposedly insisted on anonymity, claimant would suddenly perceive a grave situation rather than one which should be investigated. Even if claimant sincerely believed that the allegations of the crew members were well founded, it is also not clear how those complaints constituted a grave situation for the crew since there was no evidence that the general manager would return to the crew’s location after claimant returned to work. As well, it was also not obvious why, if the general manager’s behavior was so blatantly offensive, so many separate crew members would insist anonymity in making their complaints. On this record, claimant did not credibly demonstrate that the general manager was sexually harassing crew members or that his behavior was a grave reason for claimant to leave work when she did.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-83696 is affirmed.

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

DATE of Service: July 10, 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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