

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0775

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work for the employer without good cause (decision # 170713). Claimant filed a timely request for hearing. On June 12, 2017, ALJ Shoemake conducted a hearing, and on June 20, 2017 issued Hearing Decision 17-UI-86159, affirming the Department's decision. On June 26, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pentagon Technologies Group Inc. employed claimant as a production supervisor from March 2017 to April 10, 2017. The employer performed finishing work that required production employees, including claimant, to use chemicals.

(2) Approximately two weeks after claimant started working for the employer, she noticed that her supervisor, the production manager, smelled of alcohol. Claimant did not report it to the employer because she thought it might be the production manager's cologne or mouthwash.

(3) On or about Friday, March 31, 2017, claimant again noticed that the production manager smelled of alcohol, and reported it to a human resources employee. The human resources employee told claimant that she was "sick at the moment" and her nose "stuffed up," but she would "look into it" when she felt better, and that claimant was not the only person that week who had "said something to her about it." Audio Record at 10:45-11:50.

(4) Approximately one week later, claimant asked the human resources employee if she had had a chance to "look into" the production manager smelling of alcohol. Audio Record at 12:10-12:15. The human resources employee told claimant that she had not, but that she would "take care of it." Audio Record at 12:15-12:20.

(5) On Monday, April 10, 2017, claimant again noticed that the production manager smelled of alcohol. The production manager also yelled at claimant for something that happened during the night shift,

although claimant only worked the day shift. Approximately 30 minutes later, the production manager yelled at claimant again. The production manager had never yelled at claimant before, and claimant concluded that he was intoxicated, and believed it was unsafe to continue working under his direction because her work required the use of chemicals.

(6) Claimant did not report to the plant manager or another manager that production manager smelled of alcohol and was yelling at her, or that she believed he was intoxicated, because none were present at the time. Nor did claimant report it to the human resources employee in person or by telephone, although she had the human resources employee's telephone number. Claimant instead sent the human resources employee an email stating that she was "resigning due to the production manager smelling of alcohol," as she had reported once before, and that she was leaving her keys and employee badge at her desk. Audio Record at 8:55-9:15. Claimant then immediately left work.

(7) After leaving work, claimant used her cell phone to check her work email, and observed that the human resources employee never replied to her email.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant failed to establish that she voluntarily left work for the employer with 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.

Claimant quit work on April 10, 2017 because she believed her supervisor, the production manager, was working under the influence of alcohol, and believed it was unsafe to continue working under his direction given that her work involved the use of chemicals. Claimant's suspicion that the production manager was working under the influence of alcohol was reasonable given that he smelled of alcohol on occasion, yelled at claimant on the third occasion for something that was not her fault, and had never yelled at her before. Claimant also was understandably frustrated with the human resources employee's failure to investigate in a timely manner claimant's first reports that the production manager smelled of alcohol. However, claimant did not assert or show that the production manager ever acted in an unsafe manner with respect to the use of chemicals or otherwise, or that he yelled at her or acted intoxicated prior to April 10, 2017. Claimant did not report to the employer on April 10, 2017 that the production manager was yelling at her for something that was not her fault or acting intoxicated, let alone allow the employer an opportunity to resolve the situation. The human resources employee's failure to reply to claimant's email does not show that doing so likely would have been futile, given that claimant did not report that the production manager was yelling at her or acting intoxicated, and already had quit and left work. Nor did claimant assert or show that it likely would have been futile to report the production manager's behavior to the plant manager or another manager when one returned.

In sum, claimant failed to show that the production manager's behavior was of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have had no reasonable alternative but to quit work before reporting that behavior to the employer, or that doing so likely would have been futile. She therefore failed to show that no reasonable and prudent person would have continued to work for the employer while allowing it a reasonable opportunity to resolve the situation. Absent such showings, claimant failed to establish that she quit work with good cause, and is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-86159 is affirmed.

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

DATE of Service: July 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.