

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1065

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115745). Claimant filed a timely request for hearing. On August 23, 2017, ALJ M. Davis conducted a hearing, and on August 24, 2017 issued Hearing Decision 17-UI-91067, affirming the Department's decision. On September 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had considered the new information, this decision would remain the same for the reasons explained.

FINDINGS OF FACT: (1) IHOP # 661 employed claimant as a server and crew chief from July 2005 to June 2, 2017.

(2) Claimant worked a lot of long shifts and split or double shifts while the employer was going through some transitions. Claimant thought an employee, Stephanie, who had only worked for the employer for about six months, wanted a crew chief position and was trying to take hers by backstabbing claimant and taking her shifts. Claimant thought the manager "didn't want to hear" complaints about Stephanie. Audio recording at ~ 9:40. She knew the employer had other managers and a human resources department but did not know what they could do to help her and chose not to contact them.

(3) Claimant last worked for the employer on May 31, 2017. On June 1, 2017, claimant called the night shift crew chief to ask about her work schedule the following day, and was told that her name had been crossed off the schedule for the day and Stephanie's name written in its place. Claimant felt upset and told the night shift crew chief that she quit work. Claimant did not return to work thereafter.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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.

Claimant did not show how Stephanie’s behavior, her desire for a crew chief position, or her manager’s unwillingness to hear complaints about Stephanie created a situation so grave that she had no reasonable alternative but to quit work over it. Nor did she show that the situation was such that she could not have talked to the manager – perhaps not to complain about Stephanie, whom the record shows did not have authority to decide on her own when to work or not to work – but to ask about her own work schedule and getting enough hours. To the extent she felt speaking with the manager would have been futile given his refusal to hear her earlier complaints, claimant also had the reasonable alternative of speaking with another manager or the employer’s human resources department to find out what other options might be available to her short of quitting work. Absent a showing that no reasonable and prudent person would have continued to work available hours for her employer under the circumstances, claimant has not shown that she quit work with good cause. She is, therefore, disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-91067 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: October 3, 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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