

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1085

Reversed
Disqualification

PROCEDURAL HISTORY: On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct, within 15 days of a planned voluntary leaving without good cause (decision # 120129). Claimant filed a timely request for hearing. On August 25, 2017, ALJ M. Davis conducted a hearing, and on August 28, 2017 issued Hearing Decision 17-UI-91339, concluding the employer discharged claimant, but not for misconduct. On September 12, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the parties' written arguments to the extent they were relevant and based upon the hearing record.

FINDINGS OF FACT: (1) SSOE, Inc. employed claimant as an administrative assistant from October 2015 to April 24, 2017.

(2) Claimant felt frustrated because she worked hard, put in long hours, and was willing to take on new assignments, but did not receive recognition for doing so. She felt her attempts to get recognition "fell on deaf ears," and although she had received a \$.95 per hour pay increase after her June 2016 performance evaluation, she felt the raise was "measly" and did not feel "inclined" to ask for a title. Exhibit 2; Audio recording at ~16:45, 18:00. She had made some effort to bring her concerns to the employer's attention without success and felt there was no point in trying to fight for the title or pay she deserved, and that her supervisor did not consider her worthy or capable. She felt as though despite her positive contributions and willingness to work her supervisor only noticed her mistakes and was overly critical of her. Claimant felt that the situation at work was "just pushing me over the edge finally." *Id.*

(3) On April 14, 2017, claimant notified the employer that she intended to resign. Her resignation was open-ended and she did not mention how long a period of time she was willing to continue working:

Please consider this my resignation. I will stay on if you would like to train new people into the role / try to finish documenting processes as I do not have a new job lined up yet

but am OK if you just want to let me go instead, which is kind of what I feel like Mark would prefer to do with me at this point.

Id. Claimant had some discussions with her supervisor about the work that remained and concluded based upon those discussions that she would likely continue working for the employer for two or three months. Claimant planned to seek work within the employer's company and elsewhere before her resignation became effective, and indicated that if her efforts were successful and she left prior to the date the employer was ready for her to leave she would provide the employer with two weeks' notice.

(4) On April 17, 2017, claimant and her supervisor discussed claimant's completion of documentation about her job duties and training her successor. Claimant and her supervisor did not discuss or establish an effective date of her resignation. Between April 17th and April 21st, claimant's supervisor became dissatisfied with claimant's progress working on certain tasks. On April 21, 2017, the supervisor told claimant that her last day would be May 5, 2017. On April 24, 2017, the supervisor told claimant that her employment would end that day, instead, although she would still be paid through May 5, 2017. The employer had claimant escorted from the workplace, and she did not return to work thereafter.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant voluntarily left work without good cause.

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. OAR 471-030-0038(2)(a) (August 3, 2011). 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)(b).

The ALJ concluded that the employer discharged claimant because, notwithstanding the fact that she notified the employer of her intent to resign, she did not specify when her last day would be, "testified that she believed she would continue working for two or three months," and "her testimony was persuasive to establish that she was willing to continue working for the employer." Hearing Decision 17-UI-91339 at 3. We disagree.

As of the date claimant submitted to the employer notice of her intent to quit her job, the employer had no plans to discharge claimant. It was claimant's submission of her resignation that precipitated the work separation. Claimant's resignation did not specify the final date upon which she planned to work for the employer. Rather, she told the employer she would either leave immediately or continue working until the employer found and trained her replacement, and left the choice about when her work separation would occur to the employer. Put another way, claimant told the employer she was ready to resign and would do so as soon as the employer was ready for her to leave, and, in so doing, delegated to the employer the responsibility for choosing the end date of her employment, based upon matters of the employer's own convenience. The fact that the employer did so, modified the effective date of the resignation after making an initial selection, and that the date the employer ultimately selected was sooner than claimant had anticipated, did not change the nature of the work separation precipitated by

claimant's resignation from a voluntary leaving to a discharge. We therefore conclude that claimant voluntarily left work, effective April 24, 2017.¹

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). 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.

It appears that claimant submitted her resignation and left work because she was frustrated that she worked hard but did not receive the recognition, job title or wage increase she felt she had earned, and felt that her supervisor thought little of her work and wanted her to leave. Although any individual experiencing that situation might be dissatisfied with the prospect of continuing to work, an individual must show that the situation was "grave" in order to avoid a disqualification from unemployment insurance benefits. In this case, claimant did not establish that gravity existed because not only did she fail to establish that her working conditions were, for example, unlawful, abusive, the cause of undue stress or fatigue, or otherwise had a negative effect on her health, mental state or well-being, the circumstances and their effect on her were mild enough that she was also willing to delegate to the employer the sole responsibility for establishing her resignation date, and she was willing to continue working for the employer indefinitely despite her ultimate desire to leave work. Claimant's circumstances did not constitute a grave situation such that no reasonable and prudent person would have continued to work for the employer for an additional period of time. She therefore did not show good cause for leaving work when she did, and is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-91339 is set aside, as outlined above.

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

DATE of Service: October 9, 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.

¹ The fact that the employer paid claimant's wages through May 5, 2017 did not change the date of the work separation. "Work" for purposes of unemployment insurance is the continuing *relationship* between the employer and employee, and is not defined by the length of time the employer pays an individual. See OAR 471-030-0038(1)(a).

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