

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1130

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110703). Claimant filed a timely request for hearing. On September 8, 2017, ALJ Janzen conducted a hearing, and on September 11, 2017 issued Hearing Decision 17-UI-92270, affirming the Department's decision. On September 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Pennington Seed, Inc. employed claimant as a grower data coordinator from August 12, 1996 to July 6, 2017.

(2) In approximately 2013, a new supervisor began to manage claimant's position. Between 2013 and 2017 the new supervisor continually used foul and inappropriate language, including words and phrases like "suck ass," "fucking cocksucker," "dicking around," "arrogant prick," "fucktard," "fucking weasel," "shit," "son of a bitch," "asshole(s)," "fart bag," "damn it," "goddamn," and various other uses of the word "fuck." Audio recording at ~ 12:55. Claimant felt offended and complained to human resources. After complaining the claimant noticed small improvements, but the supervisor continued to use foul language. On one occasion after claimant had complained the new supervisor used the word "fuck" around claimant, then said "Oh, that's right, you don't like that word, do you?" Audio recording at ~ 14:45. Claimant felt that the supervisor was being condescending, and signaling claimant that she could "say whatever she wants and get away with it" despite being spoken to about her language. Audio recording at ~ 15:10. Claimant felt that the new supervisor's boss knew about the foul language the supervisor used and chose not to do anything.

(3) Claimant felt the new supervisor gave destructive instead of constructive criticism. Claimant felt demoralized and lost her drive to be productive at work. On June 23, 2017, the new supervisor sent claimant a performance evaluation claimant thought was overly critical, and directed her to do specific

things without giving claimant credit for having done her job for over 20 years. Claimant felt attacked, and contacted human resources about the evaluation.

(4) By June 26, 2017, claimant concluded that the new supervisor's bad behavior and language was never going to stop and she was unwilling to tolerate it any longer. On June 26, 2017, claimant notified the employer that she was going to resign effective July 6, 2017. She spoke with a senior human resources person the same day about the new supervisor's language and behavior. Claimant did not ask human resources to do anything about it because she felt that was human resource's job and they should have taken it upon themselves to do something. Audio recording at ~ 19:05. Human resources told claimant to call them back if she had any more issues.

(5) The same day she gave notice of her intent to resign, claimant spoke with a vice president, said she could not work with the new supervisor anymore, asked if he had ever heard the language the new supervisor used around the office, and, when he asked if there was any possible way she would stay, claimant responded that she could not continue working there as long as the new supervisor continued to be her boss. The vice president did not respond.

(6) Effective July 6, 2017, claimant quit work because of the new supervisor's language and unfair criticisms of her work.

CONCLUSIONS AND REASONS: We agree with the Department and 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.

There is no real dispute that claimant considered the new supervisor's criticisms of her work unfair and disliked the language she used in the office. Claimant alleged, however, that those conditions made the work environment hostile and that she was "afraid to go to work because of the intimidating conduct." See Claimant's argument at 2. Generally speaking, claimants are not required to "sacrifice all other than economic objectives and *** endure racial, ethnic or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits." See *McPherson v. Employment Division*, 285 Or 541, 557 (1979). Here, however, although claimant described a work environment that she found unpleasant, and even offensive, she did not describe an environment in which she was subjected to hostility, nor, on this record, can we identify behavior that would cause any reasonable and prudent person in claimant's position to feel afraid, abused or intimidated to the point that she would have had no reasonable alternative but to leave the job to escape the abusive environment. For example, claimant did not establish that the new supervisor directed foul language toward her, physically intimidated her, threatened her safety or employment, engaged in racist,

sexual or ageist behavior toward her, or otherwise abused her or reasonably caused her to feel afraid to go to work, and, while claimant objected to the conditions themselves and the failure of the employer to effectively address her concerns, objectively considered it does not appear that claimant described a grave situation. Absent a showing that claimant left work due to a situation so grave that no reasonable and prudent person would have continued to work for the employer, claimant has not shown good cause and must be disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-92270 is affirmed.

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

DATE of Service: October 18, 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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