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BYE: 201809

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1140

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 151750). Claimant filed a timely request for hearing. On July 7, 2017, ALJ Amesbury conducted a hearing and issued Hearing Decision 17-UI-86479, concluding claimant quit work without good cause. On July 20, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On August 14, 2017, EAB issued Appeals Board Decision 2017-EAB-0861, reversing and remanding the case to the Office of Administrative Hearings (OAH). On September 6, 2017, ALJ Amesbury conducted a hearing, and on September 11, 2017 issued Hearing Decision 17-UI-92227, again concluding that claimant voluntarily left work without good cause. On September 25, 2017, claimant filed an application for review of Hearing Decision 17-UI-92227 with EAB.

EAB considered claimant's argument to the extent it was relevant and based upon the hearing record.

FINDINGS OF FACT: (1) Philomath School District 17J employed claimant as registrar and counseling secretary from January 2, 2000 to March 7, 2017.

(2) Prior to early 2017, the employer hired new administrators and put them in charge of claimant's workplace. Claimant had difficulty adjusting to the new administration, disliked or felt frustrated by some of the changes that took place, and believed the administrators disliked her. Claimant sent emails to a coworker in which she vented some of her frustrations. Claimant did not believe that her emails or other conduct violated the employer's policies or workplace culture.

(3) On February 17, 2017, the employer placed claimant on paid administrative leave. The employer notified her that she was under investigation for being critical of the administration in her emails to the coworker, and for allegedly discouraging the community from supporting the administration. At the time of her suspension, claimant had never before been subject to discipline at work for any reason.

(4) Between February 17, 2017 and March 7, 2017, claimant sent an email to the employer stating that she wanted to continue her employment. Claimant cited to her contributions to the employer to explain why she thought the employer should want to keep her employed. The employer did not respond to claimant's email or respond to her request to continue working.

(5) Also prior to March 7, 2017, claimant spoke with her union representative about her suspension and the investigation. The union representative intimated that the representative had communicated with the employer, and told her that the employer was reportedly leaning towards terminating her employment.

(6) On March 7, 2017, claimant met with the employer's representatives and her union representative. During that meeting, the employer presented claimant with a document it had prepared under which, if signed, claimant agreed to resign her position in lieu of termination. Before that point, claimant had not contemplated quitting her job and did not know the employer had prepared the resignation document.

(7) The employer's representatives and the union representative both encouraged claimant to sign the document and agree to resign in lieu of termination. Claimant believed that the employer had told the union representative of its investigation results and that the union representative's advice was based upon knowledge of the results. The employer incentivized the agreement by offering to pay for three months of claimant's insurance premiums if she agreed to resign, totaling approximately $3,900.

(8) Claimant considered her options. She understood from her union representative and the employer's decision to offer her a resignation in lieu of termination agreement that the employer likely intended to terminate her employment. She was somewhat concerned about the effect a discharge might have upon her future job prospects. She also understood that if the employer discharged her she would be without a job and required to pay her own insurance premiums to maintain her insurance coverage. Claimant agreed to sign the resignation in lieu of termination agreement, and did so effective March 7, 2017. She would not have agreed to resign if not for the $3,900 insurance premium incentive payment.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work 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.[1] OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment*

[1] OAR 471-030-0038(5)(b)(F), which provides that an individual who leaves work to avoid a discharge or potential discharge for misconduct, does not apply to this case because claimant's discharge or potential discharge would not have been for misconduct. Misconduct, for purposes of unemployment insurance benefits, is generally defined as a willful or wantonly negligent violation of the employer's expectations, or a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(3)(a) (August 3, 2011). Here, claimant was not aware that she had violated the employer's expectations or that the employer expected her to refrain from engaging in any particular acts, so even if she did, ultimately, violate the employer's expectations or interests, she did not do so willfully or with wanton negligence and therefore any discharge based upon her conduct would not be considered "misconduct."

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.

The ALJ concluded that claimant quit work without good cause, reasoning that the fact that her union representative told her the "employer was leaning toward terminating her" was not "a grave situation that might have justified her decision to resign," in part because she "offered no evidence that her termination would count more heavily against her in seeking future employment than her resignation." Hearing Decision 17-UI-92227 at 4. We disagree.

Claimant did not base her conclusion that the employer was going to discharge her solely on her union representative's assertions that the employer was leaning toward discharge. In addition to her reliance on her union representative's unequivocal advice to quit, claimant had been suspended from work for weeks despite a job history entirely devoid of discipline, she knew the administrators had problems with her work and thought they did not like her, the employer had chosen not to reply to her emailed request to retain her employment, and, when the employer did meet with her after weeks of suspension, it was to offer her the opportunity to resign "in lieu of" being discharged. In addition, the employer even offered to pay claimant almost $4,000 to persuade her to resign. Those circumstances strongly suggest that the employer wanted, and planned, to sever its employment relationship with claimant, and suggest that the employer likely planned to discharge claimant imminently had she not agreed to resign. Although claimant did not identify a particularized or disproportionately negative stigma she would suffer if the employer discharged her, she was concerned about the effect being discharged might have upon her future job prospects. More important, however, was the fact that the employer presented her with a financial incentive if she agreed to resign, which was the primary reason she decided to agree. Regardless of the severity of the stigmatizing effect of a discharge, no reasonable and prudent person faced with a choice between being discharged without financial benefit and quitting her job in exchange for almost $4,000 would have rejected the option that included the financial incentive, particularly where, as here, either option resulted in her inevitable loss of employment. Claimant therefore quit work with good cause and is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-92227 is set aside, as outlined above.[2]

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

DATE of Service: <u>October 11, 2017</u>

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.

[2] This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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