

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1164

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 74744). The employer filed a timely request for hearing. On September 14, 2017, ALJ Janzen conducted a hearing, and on September 15, 2017 issued Hearing Decision 17-UI-92609, concluding claimant voluntarily left work without good cause. On September 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pavement Surface Control employed claimant from April 17, 2017 to June 5, 2017 as a flagger and traffic control supervisor.

(2) On June 2, 2017, claimant and a coworker had a disagreement while working at a job site and engaged in unprofessional conduct, such as using foul language, toward each other. The employer investigated the June 2 incident.

(3) Claimant was dissatisfied with the number of hours she worked each week for the employer, because claimant traveled from her home in Vancouver to Yakima, Washington for work. Claimant complained to her supervisor about the number of hours she worked, but did not complain to human resources or higher levels of management. The human resources manager could have given claimant additional hours to work at a job in “Tri-Cities.”¹ Audio Record at 24:18 to 24:48.

(4) On June 5, 2017, claimant spoke with the employer’s human resources manager and the manager told claimant, “The employer would prefer to keep [you], but one of [you has] to go.” Audio Record at 16:16 to 16:24. That day, the employer decided that it would discharge the other employee, and not claimant, because of her conduct on June 1 and for other reasons.

¹ Tri-Cities refers to the cities of Richland, Kennewick and Pasco, Washington, located 347 miles from Vancouver, Washington. https://en.wikipedia.org/wiki/Tri-Cities,_Washington;
<https://www.bing.com/search?q=how%20far%20is%20tri-cities%20from%20vancouver&qsn&form=QBRE&sp=-1&pq=undefined&sc=0-28&sk=&cvid=796BE9C7908C4310AF1CA9FD36C0C818>.

(5) Later on June 5, 2017, at 4:20 p.m., claimant left a telephone voicemail message for the employer's human resources manager stating that claimant was the one who was unprofessional on the job site, the other employee should not "pay the price" for claimant's conduct, and that claimant needed more hours and was leaving work. Audio Record at 32:08 to 32:57. Had the employer not received claimant's voicemail, the employer would have had continuing work available for claimant. Claimant did not contact the employer again.

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

Work Separation. The first issue in this case is the nature of claimant's work separation from the employer. 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

Claimant stated that she was willing to continue working for the employer after she left the voicemail on June 5, "if she was going to get hours." Audio Record at 33:57 to 34:06. However, claimant left a voicemail for the employer on June 5 stating that she was leaving work, and did not contact the employer again. The preponderance of the evidence shows that claimant could have continued working for the employer, but did not do so. The work separation was a voluntary leaving.

Voluntary Quit. 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.

Claimant left work, in part, because she concluded that the employer did not give her enough hours to work to justify her continued employment. Claimant's situation was analogous to an hourly employee who quits due to a reduction in hours. OAR 471-030-0038(5)(e) provides that if an individual quits work due to a reduction in hours, she has quit work without good cause unless the cost of working for the employer exceeds the amount of remuneration received or continuing to work substantially interferes with her return to full time work. Claimant did not assert, and the record does not otherwise show, that the cost of working for the employer exceeded the amount of remuneration claimant received for work, or that continuing to work substantially interfered with claimant's return to full time work. Moreover, rather than quitting work when she did, claimant had the reasonable alternative of asking a higher level manager or human resources for more hours. The record shows human resources would have provided

claimant with additional work in Tri-Cities. Because claimant did not show she had no reasonable alternative but to leave work when she did, claimant failed to establish that no reasonable and prudent person would have continued to work for her employer for an additional period of time due to lack of hours.

Claimant also left work, in part, because she believed that she should be disciplined, and not her coworker, due to the June 2 incident. According to claimant, claimant was the one who was unprofessional during the incident, and the other employee should not have to suffer any consequences due to claimant's actions. Discipline in the workplace and other personnel decisions are the prerogative of the employer, and the employer's decision to discharge a different employee for the June 2 incident "and other reasons" was not unreasonable. Claimant's preference, that she should be the one to leave the work project rather than the other employee, did not constitute a grave situation for claimant such that a reasonable and prudent person, exercising ordinary common sense, would have no reasonable alternative but to leave work.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-92609 is affirmed.

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

DATE of Service: October 30, 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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