

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1173

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 144205). Claimant filed a timely request for hearing. On September 26, 2017, ALJ Griffin conducted a hearing, and on September 28, 2017 issued Hearing Decision 17-UI-93450, affirming the Department's decision. On October 3, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument with his application for review but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Pihl Inc. employed claimant as its operations manager from April 22 through July 10, 2017.

(2) After working for the employer for approximately one month, claimant observed that its owner managed employees through "intimidation," "brow beating" and instilling "fear." Audio Record at 28:20-28:36. The owner increasingly berated claimant for perceived performance deficiencies, including things that were not claimant's fault, such as performing tasks that the owner had instructed him to perform, and not performing tasks that the owner had instructed him not to perform. The owner's behavior escalated over time, with him repeatedly telling claimant that he was a "liar," "stupid" and did not know "what the heck was going on." Audio Record at 25:00-25:20.

(3) Claimant met with the owner on multiple occasions to discuss performance related issues and how claimant could better meet the owner's expectations. However, the owner's berating of claimant continued to increase and escalate, especially during the last two weeks of claimant's employment. On one occasion, the owner called claimant "stupid" in front of the employees claimant managed. Audio Record at 18:30-18:33. The employees began questioning claimant's authority, asking him if he had cleared his decisions with the owner.

(4) On May 5 or 6, 2017, the owner ordered claimant to discharge the employer's shop manager, who was in charge of tracking the status of equipment waiting for replacement parts. Claimant told the owner he disagreed with the decision to discharge the shop manager. The owner again berated claimant, told him that he did not "know what was going on," and that the shop foreman was "worthless," a "waste of space" and of no value to the employer. Audio Record at 28:00-28:25. Claimant discharged the shop manager as instructed.

(5) On May 7, 2017, the owner questioned claimant regarding the status of equipment for replacement parts. Claimant answered the owner's questions to the best of his knowledge, given that he could no longer ask the shop manager for that information. The owner again berated claimant, told him he did not know what he was talking about, called him "dense" and "slow," and falsely accused him of lying.

(6) Also on May 7, 2017, the owner berated claimant for not yet having an engine rebuilt, although the owner had last told claimant to wait on information from the owner before proceeding, and had not yet provided the information. The owner told claimant he did not "know what the heck was going on," and that claimant was "basically clueless," "stupid" and "dense." Audio Record at 15:30-16:00.

(7) Also on May 7, 2017, the owner berated claimant in front of the employees claimant managed regarding a procedure for checking equipment in and out for repairs that claimant and the owner had developed. The owner again called claimant "dense" and falsely accused him of deviating from the procedure they had developed. Audio Record at 17:00-17:45.

(8) Claimant quit working for the employer due to the owner's behavior toward him.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit working for the employer with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

In Hearing Decision 17-UI-93450, the ALJ determined that "claimant established that he worked in a situation that he, personally, found oppressive and unsatisfactory," in part, because the employer's

owner “treated claimant in an offensive manner which undermined his ability to work with his subordinates,” which “must have been awful for claimant.”¹ However, the ALJ nevertheless concluded that claimant quit work without good cause. The ALJ first asserted that claimant’s “own unique reaction to the owner’s abrasive management style is not relevant,” that “some supervisors will, from time to time, lose emotional sobriety and denigrate a subordinate for what the supervisor perceives to be substandard work,” and that the owner’s behavior did not “amount to a situation of sufficient gravity which would lead a reasonable person to believe he or she had no alternative but to quit.”² Alternatively, the ALJ asserted that even if the owner’s behavior was “sufficiently grave for a reasonable person to give quitting serious consideration,” claimant had the reasonable alternative of bringing “the matter of the owner’s treatment of him up with the owner himself” or the employer’s facilities manager, “and ask[ing] the owner to refrain from treating him in such a manner,” which claimant failed to do.³

We first disagree with the ALJ’s assertion that the owner’s treatment of claimant was not such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit work if there was no reasonable alternative. During the last month of claimant’s employment, the owner increasingly berated him for imagined performance deficiencies, repeatedly accused him of being incompetent, falsely accused him of dishonesty, and repeatedly insulted his intelligence by calling him “stupid,” “dense,” “slow” and “basically clueless.” The owner’s abusive behavior increased and escalated during the last two weeks of claimant’s employment, undermining claimant’s authority over the employees he managed, and occurred on three separate occasions on claimant’s last day of work alone. The owner’s treatment of claimant was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit work if there was no reasonable alternative.

We also disagree with the ALJ’s assertion that complaining to the owner or the facilities manager and asking the owner to refrain from treating him in such a manner was a reasonable alternative to quitting. Claimant met with the owner on multiple occasions to discuss performance related issues and how claimant could better meet the owner’s expectations, and, absent evidence to the contrary, we infer that asking the owner to change his behavior likely would have been futile. At hearing, the facilities manager testified that he had worked for the employer for 13 years and had never heard the owner refer to anyone, including claimant, as “stupid or “dense,” or make any other belittling or berating type of statements, although he admitted that he was not present during the incidents on July 7, 2017. Audio Record at 38:15-38:45. The facilities manager’s testimony indicates that he did not believe the owner engaged in the types of behavior established by claimant, and we therefore find it unlikely that he would have intervened with the owner on claimant’s behalf. And even if he would have, there is no evidence that the facilities manager had any authority over the owner, or any ability to change the owner’s behavior. We therefore find that complaining to the facilities manager also likely would have been futile.

¹ Hearing Decision 17-UI-93450 at 3.

² *Id.*

³ *Id.*

In sum, the owner's abusive behavior toward claimant was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense would quit work if there was no reasonable alternative, and because complaining to the owner or the facilities manager likely would have been futile, claimant had no reasonable alternative but to quit. Claimant therefore quit work with good cause and is not disqualified from the receipt of benefits based on his work separation from the employer.

DECISION: Hearing Decision 17-UI-93450 is set aside, as outlined above.⁴

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

DATE of Service: November 2, 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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⁴ 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.