

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1276

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105344). Claimant filed a timely request for hearing. On October 25, 2017, ALJ Lease conducted a hearing at which the employer failed to appear, and on October 26, 2017 issued Hearing Decision 17-UI-95423, affirming the Department's decision. On November 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Herbal Grasslands, LLC employed claimant from September 2015 to September 4, 2017 as an assistant manager.

(2) In 2015, claimant was diagnosed with an anxiety disorder. Claimant was generally dissatisfied with some of her interpersonal relationships at work, and felt the relationships caused her stress.

(3) One of claimant's duties was to manage inventory for the employer. On September 3, 2017, one of the two owners had removed the inventory books from their normal place so they were not available to claimant.

(4) On September 4, 2017, the inventory books were back in their normal location and available to claimant. Claimant noticed that the owner who had removed the inventory books had put handwritten notes about the employer's employees in the book. Claimant read the notes and considered some of the information written in the notes to be "hurtful" and "personal" information about claimant and her coworkers that claimant believed should not have been written in the inventory books where other employees could read it. Audio Record at 14:20 to 14:24, 18:35 to 18:54. One of the notes stated that claimant and a coworker "hated" another coworker. Audio Record at 14:38 to 14:45. One note stated that an employee "emotional[ly] abuse[d]" another employee. Audio Record at 14:54 to 14:59.

(5) Claimant was upset about the notes and asked the other owner, who had not written the notes, about them. He stated that he knew nothing about the notes. The owner told claimant he would investigate the matter, speak with the other owner who had written the notes, "put a stop to it," and "get back to

[claimant].” Audio Record at 16:38 to 16:45. Claimant told the owner that she could not work in that environment and that she needed to leave. The owner told claimant he understood. Claimant did not speak with the owner who was the author of the notes after reading the notes.

(6) Later on September 4, 2017, claimant called the owner she had spoken with earlier that day and asked him if he had spoken with the other owner about the notes. He responded that he had not yet done so, but was going to speak with her. Claimant told him she would not report to work for the next two days for her scheduled shift.

(7) Claimant did not contact the employer again. On September 8, 2017, claimant’s mother-in-law called the owner and asked him what he planned to do. He told the mother-in-law that claimant quit.

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

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.*

At hearing, claimant asserted that the employer discharged her because she never told the employer that she quit. Audio Record at 11:40 to 11:52. However, claimant could have worked on September 5 and 6, but chose not to work, and claimant did not return to work or contact the employer again after September 4. On the contrary, it appears that the employer would have allowed claimant to continue working after September 4 had she wanted to work her scheduled shifts or contacted the employer about returning after taking two days off work. Thus, because claimant could have continued to work for an additional period of time, the work separation was a voluntary leaving.

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 had been diagnosed with anxiety, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Although claimant was generally dissatisfied with some of her interpersonal relationships at work that caused her stress and anxiety, she did not quit until September 4, when she found and read the notes

authored by one of the owners, making that the proximate cause of her decision to quit work and the proper focus of the good cause analysis. Claimant was upset by the personal content included in the notes she read, in part because it was from personal conversations between employees, but also because she felt others might read the notes. However, the situation claimant described was not so grave that a person with the characteristics and qualities of a person with anxiety would not have continued to work for her employer.

Even if we had concluded that her circumstances were grave, claimant had reasonable alternatives to quitting when she did. One of the owners told claimant he would “put a stop to” the situation with the notes with the other owner and report back to claimant about it. Claimant had the reasonable alternative of waiting to see if the owner addressed the matter with his co-owner in a satisfactory manner. Claimant also had the reasonable alternative of discussing the notes with the owner who authored the notes and proposing that she remove them from the inventory books where other employees might read them. We conclude that a reasonable and prudent person with claimant’s condition would have pursued such reasonable alternatives before quitting her job.

Because the circumstances under which claimant quit work were not grave, and she had reasonable alternatives to quitting when she did, we conclude that claimant voluntarily left work without good cause. Claimant therefore is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-95423 is affirmed.

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

DATE of Service: December 4, 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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