

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1304

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct within 15 days of claimant’s planned voluntary leaving without good cause (decision # 144031). Claimant filed a timely request for hearing. On October 20, 2017, ALJ Janzen conducted a hearing at which the employer did not appear, and on October 24, 2017 issued Hearing Decision 17-UI-95214, concluding claimant voluntarily left work without good cause. On November 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Head Start of Lane County employed claimant as a financial analysis specialist from February 21, 2017 until August 14, 2017.

(2) During claimant’s employment, claimant concluded that her immediate supervisor was not a good manager.

(3) On Sunday, August 6, 2017, claimant sent an email to her supervisor informing the supervisor that she was going to leave work to return to school at Lane County Community College for winter term 2018, but would continue working until the employer’s budget was prepared. The due date for the budget was the end of September 2017, although claimant anticipated she would complete the budget sometime around early September 2017. Shortly after claimant sent the email, the supervisor replied to it that same day, stating that she was “sorry” claimant was “unhappy” at work, that there was no need for claimant to return to the workplace or to continue working for the employer, that the employer would make arrangements to deliver to claimant any of her personal belongings that were on the workplace premises and claimant’s final paycheck would be directly deposited in claimant’s bank account. Audio at ~18:54.

(4) Claimant did not report for work on Monday, August 7, 2017. That day, the employer’s human resources director sent an email to claimant’s personal email address. The director informed claimant that there had been a “miscommunication” between claimant and her supervisor and he asked claimant to return to work on Tuesday, August 8, 2017 and to continue working at least until she had completed

the budget. Audio at ~20:23. Although she had not reported for work, claimant was paid for the work day of August 7, 2017.

(5) On August 8, 2017, claimant reported for work and worked. On Wednesday, August 9, 2017, claimant asked the director of human resources and her supervisor to meet with her to discuss “communication issues” between claimant and the supervisor and concerns claimant had with the “professionalism” of the supervisor. Audio at ~21:22. At meeting, the supervisor told claimant she had construed claimant’s August 6, 2017 email differently from the way claimant had intended it to be construed and apologized for her response to it. Claimant thought the meeting had been productive and “everything was good.” Audio at ~21:53. Claimant worked without incident from Wednesday, August 9, 2017 through Friday, August 11, 2017.

(6) On Monday, August 14, 2017, claimant reported for work. Upon claimant’s arrival claimant’s supervisor had claimant come to her office. The supervisor “reprimanded” claimant “very loudly,” without closing her office door. Audio at ~22:22. Claimant left the supervisor’s office and returned to her desk. At around that time, claimant’s coworker told claimant that the supervisor had showed some of the emails that claimant had written to the supervisor to the coworker and other non-management members of the employer’s staff. Claimant was upset because she had shared with the supervisor some information that she considered personal, like the death of her mother in June 2017 and the reasons that she was going to leave work. Audio at ~ 23:19. Claimant thought the disclosure of those emails by the supervisor was inappropriate and unprofessional because the disclosure was to non-management employees. Sometime around this time, claimant also learned that the reason the human resources director had asked her to return to work on August 7, 2017 was because he was concerned that claimant was going to sue the employer if she was not allowed to return to work. Audio at ~24:10; ~28:10.

(7) After leaving the supervisor’s office on August 14, 2017, claimant concluded “the work environment was not very good.” Audio at ~24:16; ~27:10. Claimant decided she was not going to stay at work and “be treated that way” and that the meeting on August 9, 2017 had not resulted in changed behavior by her supervisor. Audio at ~25:13. Claimant did not consider approaching the human resources director or anyone else in management about her supervisor’s behavior since she thought the conversation at which the human resources representative on August 9, 2017 should have been “sufficient enough.” Audio at 26:27. Claimant thought the supervisor was a “bad manager” and would remain one. Audio at ~30:28

(8) Claimant then tried to find the supervisor to turn in her keys and badge, but was unable to locate her. On August 14, 2017, claimant turned in her keys and badge to the human resources department and stated that she was quitting work. Later, after claimant was at home, claimant emailed a letter of resignation to her supervisor, the human resources department and the employer’s executive director, stating that her leaving work was effective immediately.

CONCLUSIONS AND REASONS: 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.

Although claimant initially gave notice on August 6, 2017 that she would quit work sometime in September 2017 to return to school, she accelerated the date of her leaving to August 14, 2017 based on events occurring after August 6, 2017. Had claimant's actual voluntary leaving occurred no more than 15 days prior to the initially planned voluntary leaving, we would consider whether or not claimant had good cause to leave work both as of August 14, 2017 and as of the date of the planned leaving in order to determine whether claimant's work separation should be adjudicated as if the actual, earlier voluntary leaving had not occurred and the planned voluntary leaving had occurred. *See* ORS 657.176(6). However, since claimant's actual leaving occurred more than 15 days before her planned voluntary leaving, there is no basis to disregard the earlier actual leaving as the operative work separation event. Consequently, whether claimant had good cause to leave work must be assessed based on the circumstances that gave rise to claimant's decision to leave work on August 14, 2017.

Claimant decided to leave work on August 14, 2017 because of her supervisor's behavior that day in reprimanding her and claimant's perception that the supervisor was a "bad manager" whose behavior was unlikely to change. Audio at ~30:28. While claimant may have disliked her supervisor's behavior, claimant did not allude to any serious harm she sustained from that behavior. Nothing in claimant's description of the supervisor's behavior or the supervisor's treatment of her would appear to have given rise to grave circumstances from which claimant had no alternative but to leave work. In addition, although claimant had met with the director of human resources the week before she decided to quit to address her concerns about how the supervisor had treated her and the supervisor then rebuked claimant on August 14, 2017, it was not reasonable for claimant to conclude that it would be futile to seek further assistance from the director to rectify her supervisor's continued behavior, particularly since claimant neither asserted nor presented any evidence from which such futility was reasonably inferable. For these reasons, claimant did not meet her burden to show that grave reasons existed from which she had no alternative but to leave work on August 14, 2017.

Claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-95214 is affirmed.

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

DATE of Service: December 13, 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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