

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1334

Hearing Decision 17-UI-95952 Affirmed ~ Disqualification
Amended Hearing Decision 17-UI-96785 Affirmed ~ Ineligible Week 34-17

PROCEDURAL HISTORY: On September 19, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions. One concluded that claimant voluntarily left work without good cause (decision # 141535), and the other concluded that claimant was not available for work during the weeks from August 20, 2017 through September 2, 2017 (decision # 142638). Claimant filed timely requests for hearings on both decisions. On November 1, 2017, ALJ Turner conducted hearings on both decisions. On November 2, 2017, ALJ Turner issued Hearing Decision 17-UI-95952 affirming decision # 141535, and on November 3, 2017 issued Hearing Decision 17-UI-96100 modifying decision # 142638 and concluding that claimant was not available for work from August 20 to 26, 2017, but was available for work from August 27 to September 2, 2017. On November 14, 2017, ALJ Turner amended that hearing decision with Amended Hearing Decision 17-UI-96785 to correct a scrivener's error. On November 16, 2017, claimant filed applications for review of Hearing Decisions 17-UI-95952 and Amended Hearing Decision 17-UI-96785 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decision 17-UI-95952 and Amended Hearing Decision 17-UI-96785. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1334 and 2017-EAB-1335).

FINDINGS OF FACT: (1) Boot Barn, Inc. employed claimant from January 15, 2017 until claimant quit on April 10, 2017.

(2) The employer initially hired claimant as a part time sales associate. Claimant's store manager told claimant at hire that she would have a yearly performance review. The employer's policy was to give each employee a review within one year of her last review. In July 2016, the employer gave her a performance review and promoted to her to a key holder position, which included some managerial duties. With the promotion, claimant received a pay raise to \$10 per hour and was given 34 to 36 hours of work per week.

(3) In January 2017, a new assistant manager transferred to claimant's store and was claimant's supervisor. Claimant was dissatisfied with how the assistant manager treated her because she left her own duties unfinished at times so claimant had to complete them, asked claimant to perform work that did not fall within claimant's job description and criticized claimant if she did not perform the work correctly, and spoke to claimant in a manner that claimant considered to be "disrespectful," "degrading," and, at times, "flippant." Transcript at 10.

(4) Claimant complained to the assistant manager herself and to her store manager about the assistant manager's treatment of claimant. The store manager met with claimant and the assistant manager. Claimant did not feel the manager's treatment of her improved after she complained.

(5) Claimant believed the assistant manager took credit for some of claimant's sales. Claimant was able to correct one of the sales herself, but others remained incorrect. Employees received certain benefits for making some types of sales. Claimant complained again to the store manager, who investigated the sales. The store manager told claimant the employer was trying to correct the sales.

(6) Claimant continued to feel dissatisfied with how the assistant manager treated her, and told the store manager she planned to complain to the employer's district manager. The store manager told claimant she should not do so because she would address the problem. The store manager gave claimant a copy of her job description and permission to refuse to perform duties given to her by the assistant manager that fell outside her job duties.

(7) Assuming that her yearly review would occur one year from hire, in February 2017 claimant asked the store manager if she was going to be given a performance review, and explained that she hoped for a pay raise. Pay raises were generally given only as part of the review process. The store manager told claimant that the employer was "workin' on it," but did not give claimant a date for her review. Transcript at 13.

(8) Beginning in March 2017, the employer reduced claimant's hours to 32 hours of work per week. Claimant was dissatisfied with the reduction in hours. Claimant's expenses to be able to work each week was \$45 per week for gasoline to travel to and from work.

(9) In mid-March 2017, claimant tried to contact the district manager to complain about the assistant manager, but the district manager was not available. The employer had a confidential "human resources hotline" that addressed personnel issues. Claimant knew about the hotline but did not call it to complain about any of her concerns. The employer did not have another store within a reasonable commuting distance of claimant's home.

(10) On April 10, 2017, claimant left work because she was dissatisfied with how her assistant manager treated her and because the employer reduced her work hours and had not yet given her a performance review in 2017.

(11) On June 29, 2017, claimant filed an initial claim for unemployment insurance benefits.

(12) From July 10, 2017 through August 25, 2017, claimant was attending a class at a community college scheduled on Tuesdays and Thursdays from 8:00 a.m. to 10:20 a.m. Claimant turned in her final exam and completed the class on August 25, 2017.

(13) Claimant claimed benefits for the weeks of August 20, 2017 through September 2, 2017 (weeks 34-17 and 35-17), the weeks at issue. The Department denied claimant benefits for these weeks.

(14) During the weeks at issue, claimant sought work in retail sales and as a receptionist. The customary days and hours for retail sales in claimant's labor market were all days, day and swing shifts. For receptionist work, the customary days and hours were Monday through Saturday, day shift.

(15) On September 15, 2017, claimant told a Department representative that she was unsure if she would be willing to drop her class to accept work that conflicted with her class because she wanted to complete her class. Claimant also told the representative that she told prospective employers she was available to work from 8:00 a.m. to 5:00 p.m. all days except Tuesdays and Thursdays, when she was only available to work after her class.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause, and that claimant was not available for work from August 20 through August 26, 2017. Claimant was available for work from August 27 through September 2, 2017.

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) (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.

To the extent claimant left work because she was dissatisfied that the employer had not given her a performance review in 2017, claimant did not show good cause for leaving work. Claimant's expectation that she would receive a review in early 2017 was based on her apparent misunderstanding of the employer's review policy, and the record shows the employer did not fail to follow its own review policy with regard to claimant. Moreover, although claimant was anxious for a pay raise, she did not show that having to wait up to a year from her last promotion for a review and possible pay raise created a grave situation for her due to her financial situation or otherwise.

To the extent claimant left work because the employer reduced her hours, claimant did not show good cause to quit. 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 \$45 per week cost of working for the employer exceeded the amount of remuneration she received working for the

employer. Nor did claimant show that continuing to work for the employer substantially interfered with a search for full time work.

Finally, to the extent claimant left work because of how her assistant manager treated her, claimant did not establish that she left work because of a situation of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Although her assistant manager appears to have been unpleasant and rude, the record fails to show that her behavior was so hostile or abusive that claimant had to leave work when she did. Claimant also had reasonable alternatives to quitting work, such as using the employer's human resources hotline or continuing to complain to the store manager. Claimant did not show it would have been futile to complain to the store manager again because, although the problems with the assistant manager persisted, the store manager had taken some measures to address claimant's complaints, such as allowing claimant the right to refuse to do work from the assistant manager that was outside claimant's job description. Claimant also had the reasonable alternative of trying to contact the district manager again before quitting work. Although the store manager disapproved of claimant contacting the district manager, it was a reasonable alternative to quitting work, as was calling the employer's human resources hotline.

In sum, claimant quit work without good cause. She is, therefore, disqualified from receiving unemployment insurance benefits because of her work separation.

Availability for Work. To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual must meet certain minimum requirements to be considered "available for work" for purposes of ORS 657.155(1)(c). OAR 471-030-0036(3) (February 23, 2014). Among those requirements are that the individual be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market during all of the usual days and hours customary for the type of work the individual is seeking, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

The preponderance of the evidence at hearing showed that claimant placed limitations on her availability for work during the last week of her class, week 34-17, by telling prospective employers that she was available for work only during hours that did not conflict with her class schedule. Claimant also expressed that she wanted to complete her class, and it is unlikely she would have withdrawn from her class with only one week remaining before she completed it during week 34-17. Because claimant imposed the condition of accepting only work that did not conflict with her class schedule during week 34-17, and her class took place during some of the days and hours customary for the type of work claimant was seeking, she was not available for work during week 34-17. Because claimant completed her class before week 35-17, and did not have another class during that week, the record shows claimant was available for work during that week. We therefore agree with the ALJ and conclude claimant was not eligible for benefits during week 34-17, but is eligible for benefits for week 35-17.

DECISION: Hearing Decision 17-UI-95952 and Amended Hearing Decision 17-UI-96785 are affirmed.

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

DATE of Service: December 15, 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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