

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1347

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95705). Claimant filed a timely request for hearing. On November 3, 2017, ALJ Frank conducted a hearing, and on November 9, 2017, issued Hearing Decision 17-UI-96536, affirming the Department's decision. On November 20, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Harney District Hospital employed claimant as a housekeeper from October 2016 August 16, 2017.

(2) The employer had a policy that designated three or more consecutive absences from work without notice as job abandonment.

(3) In August 2017, claimant was pregnant and nearing the end of her first trimester. Due to claimant's pregnancy and to accommodate her occasional inability to report for work as scheduled due to prenatal symptoms she was experiencing, the employer adjusted claimant's work schedule.

(4) On August 16, 2017, claimant was scheduled to report for work at 3:00 p.m. After claimant failed to report for work or notify the employer she would be absent, her supervisor sent her a text message inquiring if she would report for work that day. Claimant immediately responded that she would not and added that she had tried to call and text the supervisor earlier to let her know that she was ill with a fever. The supervisor responded by text, "I want you to come see me tomorrow. This is not going to work for our department - if you are well enough to come in." Audio Record ~ 17:30 to 19:00. The supervisor's intent was to meet with claimant and discuss future scheduling. Claimant, who interpreted the supervisor's text message as a discharge, did not respond to the supervisor or contact any other employer personnel, such as human resources personnel, to inquire about her job status.

(5) Claimant failed to report for work as scheduled on August 17 and August 18, 2017 or notify the employer that she would be absent.

(6) On August 21, 2017, claimant's supervisor called claimant by telephone to inquire about her whereabouts on August 17 and 18. Claimant explained that she had interpreted the August 16 text message as a discharge and did not report for work or contact the employer as a result. During a meeting later that day with the human resources director, claimant requested that her work separation not be reported as job abandonment.

(7) Continuing work was available to claimant on and after August 16, 2017.

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

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).

At hearing, claimant asserted that she had been discharged rather than quit, based on the August 16 text message she received from her supervisor. Audio Record ~ 7:15 to 8:00. However, there was no dispute regarding the content of the text message in question and, viewed objectively, that message does not indicate that claimant's employment had been terminated. Moreover, by directing claimant to report to speak with her supervisor the next day, a scheduled work day, the employer demonstrated that claimant could have continued to work for the employer for an additional period of time. Claimant did not dispute that she understood that she was scheduled to work on August 17 and 18, and by failing to report for work or notify the employer she would be absent on either of those days, or respond to the employer's subsequent inquiry, claimant demonstrated that she was no longer willing to continue to work for the employer. Under the above cited rules, the work separation was a voluntary leaving that occurred on August 16, 2017.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

Because claimant mistakenly believed that she was discharged, she offered no explanation for leaving her employment when she did. However, viewed objectively, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would not ignore her employer after receiving, at best, a vague message that her supervisor was dissatisfied with her missed shift or lack of notification of absence. At a minimum, such a person would not assume, without more,

that she had been discharged and would inquire of or communicate with the employer regarding her work status. Claimant therefore did not show good cause for leaving work when she did.

Claimant voluntarily left work without good cause. Accordingly, claimant is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-96536 is affirmed.

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

DATE of Service: December 20, 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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