

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0037

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74824). Claimant filed a timely request for hearing. On October 25, 2017, ALJ Frank conducted a hearing, and on November 2, 2017 issued Hearing Decision 17-UI-96028, affirming the Department's decision. On November 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On December 11, 2017, EAB issued Appeals Board Decision 2017-EAB-1300, reversing Hearing Decision 17-UI-96028 and remanding the case to the Office of Administrative Hearings for additional evidence. On December 27, 2017, ALJ Frank conducted a remand hearing, and on January 4, 2018, issued Hearing Decision 18-UI-100151, again affirming decision # 74824. On January 9, 2018, claimant filed an application for review of Hearing Decision 18-UI-100151 with EAB.

EAB considered claimant's written argument to the extent it was based on the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Eagle Funding employed claimant as a production assistant from August 15, 2016 to June 23, 2017.

(2) Prior to June 2, 2017, claimant experienced difficulty working with and for his supervisor because, unlike other loan officers he had worked with, she gave him little direction and then "bullied him" over his resulting work performance. Audio Record (October 25, 2017) ~ 8:30 to 9:00. Claimant had sent an email to the office manager about his complaints against his supervisor and requesting a transfer, and the office manager forwarded it to the district manager who then discussed claimant's complaints with claimant's supervisor. On June 2, 2017, claimant's supervisor called claimant in to her office for a meeting between her, claimant and, by phone, the district manager, in part over "realtor updates not getting done" due to her lack of direction to claimant in that regard. Audio Record (December 27, 2017) ~ 18:30 to 21:30. Claimant's supervisor then "proceeded to stand up, come over the desk yelling and shouting" at claimant in a physically threatening manner over his apparent reports to the district

manager about that issue. Audio Record (December 27, 2017) ~ 19:00 to 21:30. After directing claimant's supervisor to "calm down," the district manager reprimanded the supervisor for not getting the required update information to claimant to convey to the realtors. Audio Record (December 27, 2017) ~ 19:00 to 21:30. During that meeting, claimant did not stand up, approach or wave his arms at his supervisor in any way.

(3) On Friday, June 16, 2017, claimant was called into a meeting between claimant's supervisor, claimant and, again by phone, the district manager, and claimant's supervisor gave him a written warning, in part, because claimant allegedly "came at [the supervisor] over her desk with [his] arms waving in a threatening manner" during the June 2 meeting. Audio Record (October 25, 2017) ~ 9:00 to 10:00. The warning further stated that "any more unprofessional behavior [including] verbal or nonverbal posturing will be cause for immediate termination." Audio Record (October 25, 2017) ~ 22:15 to 23:00. Claimant became distraught, left the meeting in tears and went home because the supervisor had completely fabricated claimant's alleged conduct on June 2, and the district manager knew that claimant's supervisor is the one he had to tell "to calm down" during the meeting.

(4) On June 19, 2017, claimant called in sick because of his distress over the fabricated warning he had just been issued and his concern over potential future warnings of a fabricated nature that could result in his discharge. On June 20, 2017, he again notified the employer that he would be absent from work and contacted the employer's human resources department to complain about the fabricated warning he had received. On June 21, 2017, claimant again notified the employer he would be absent, and the employer's vice president of human resources contacted him about his complaint over the warning he had received and his desire for a transfer. On June 22, 2017 that person contacted claimant once more, informed him she had learned that a transfer was not an option and that she believed "we needed to part ways," with the employer willing to give claimant two weeks' severance pay in return for a signed release. Audio Record (December 27, 2017) ~ 25:45 to 26:30.

(5) On June 23, 2017, claimant signed the release and quit. Claimant quit because he was stressed and afraid over working with the same supervisor in what he considered a "very threatening environment." Audio Record (December 27, 2017) ~ 16:45 to 17:45. Claimant was concerned that "after being [falsely] accused of coming at [the supervisor] violently over her desk"...what is she going to say next? I can't control any of that...she might say I was sexually harassing her" and not receive any support from the district manager. Audio Record (October 25, 2017) ~ 12:00 to 13:30.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work, but disagree that he left during the week of June 11, 2017 and without good cause.

As a preliminary matter, claimant and his supervisor had differing accounts of what had occurred on during their meeting on June 2, 2017. However, the employer did not offer claimant's supervisor as a witness at hearing and we find no reason to doubt claimant's credibility. Accordingly, we based our findings on claimant's first hand testimony on matters in dispute between them.

At hearing, claimant asserted that he was "let go," while the employer denied that it discharged claimant. Cf. Audio Record (October 25, 2017) ~ 7:30; Audio Record (December 27, 2017) ~ 25:45 to 26:45. Under Department rules, 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; 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, the work separation is a discharge. OAR 471-030-0038(2) (August 3, 2011). However, claimant did not dispute that it was he that suggested to the human resources officer on June 21 that if a transfer could not be accommodated, “maybe [they] should let [me] go” and that he was not required to accept the employer’s severance offer on June 23, 2017. Audio Record (October 25, 2017) ~ 26:00 to 28:00. However, although we agree with the ALJ that claimant’s work separation was a voluntary leaving, we disagree that it occurred during the week of June 11, 2017 rather than during the week of June 18, 2017, when claimant signed his severance agreement. Hearing Decision 18-UI-100151 at 3.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 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.

Claimant quit work because he his supervisor had fabricated a report of threatening behavior against her on June 2, 2017 that was endorsed by the district manager when the manager knew that it was the supervisor that had to be told to “calm down” during the June 2 meeting, rather than claimant. The district manager did not dispute claimant’s testimony in that regard, and although he initially stated that he recalled the supervisor telling claimant to “sit down,” he did not explain whether the supervisor’s statement was made at the outset of the meeting or later on during the alleged argument between claimant and his supervisor. Viewing the record as a whole, we agree that under the circumstances described, the fabricated warning created a grave circumstance for claimant. Claimant became so distraught that he left work immediately after the meeting in tears and remained distraught through the weekend to the extent he called in sick. Claimant believed the his supervisor concocted the warning in retaliation for his report to the district manager which resulted in her reprimand on June 2, and remained concerned that she could cause his discharge by fabricating a similar report of unprofessional behavior through “verbal or nonverbal posturing” or even sexual harassment that would result in his immediate termination. Viewed objectively, claimant met his burden to show that no reasonable and prudent person in his circumstances would have continued to work for that supervisor, or therefore the employer, for an additional period of time.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Hearing Decision 18-UI-100151 is set aside, as outlined above.¹

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

¹ 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.

DATE of Service: February 9, 2018

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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