

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0117

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 21, 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 a voluntary leaving without good cause (decision # 83610). Claimant filed a timely request for hearing. On January 25, 2018, ALJ Amesbury conducted a hearing, and on January 26, 2018, issued Hearing Decision 18-UI-101887, concluding claimant voluntarily left work with good cause. On January 31, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Equilar, a provider of corporate board intelligence solutions, employed claimant as an account executive from March 13, 2017 to August 2, 2017.

(2) During the first two months of his employment, claimant had a good working relationship with the employer's CEO, also the owner. However, beginning in June, the owner came to claimant's office on almost a daily basis, randomly selected one of the approximately 250 client businesses claimant was assigned to, and grilled him for detail, such as who was the general counsel, board members and executives of the business. When claimant could not answer from memory, the owner would belittle and demean him, eventually leading to "cussing at [claimant]," and when claimant pushed back that he was always aware of that info whenever he contacted the client and that his sales were good, the owner would respond by calling him names such as "fucking pussy." Audio Record ~ 11:00 to 12:00, 17:45 to 19:00. Although the owner frequently emailed other employees for details on their work, he only "yelled" and "cussed" at claimant, and those exchanges were so loud and extreme that coworkers commented to claimant about it. Audio Record at 16:15 to 17:30.

(3) Claimant complained to his immediate supervisor, the employer's vice president of sales, about the owner's behavior toward him, but his supervisor candidly told him he would not intervene because "all his loyalty was to the owner" and that claimant was "expendable." Audio Record at 12:00 to 12:50. He did not complain to the human resources officer because that individual was "very tied" to the CEO, had just been hired by him and claimant concluded that given the controlling nature of the owner, it would be futile to complain to that individual. Audio Record ~ 15:00 to 16:15.

(4) Around August 1, 2017, claimant concluded that he could no longer mentally handle the “abusive” and “unprofessional” working conditions he was exposed to almost daily and that likely would not end. Audio Record at 10:30 to 11:30. On August 2, 2017, he gave his supervisor two weeks’ notice of his intent to resign. The human resources officer then exchanged emails with claimant confirming that claimant would be paid for the two weeks in question, but that it was up to claimant if he wanted to “stay through” or remain at home during those two weeks. Audio Record at 33:00 to 33:45. Claimant chose to stay at home.

(5) Claimant voluntarily left work due to the “abusive” and “unprofessional” working conditions he was subjected to by the owner.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work with good cause.

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) (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 the employer for an additional period of time.

Claimant quit working for the employer because of the “unprofessional” and “abusive” behavior of the owner toward him that had been occurring on almost a daily basis for two months. Abusive working conditions can, under some circumstances, amount to good cause. *See McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”). Here, the owner yelled at, belittled and demeaned claimant for not having the identities of his client’s executive officers and general counsel committed to memory although his client businesses numbered around 250. The owner’s behavior included calling claimant names such as “fucking pussy” when he couldn’t respond to his questions about the officers of a company he had just chosen to discuss on a random basis. Although claimant tried to reason with the owner that he was always aware of those individuals when it was time to meet with the client, the owner’s abusive behavior continued and was extreme enough that coworkers commented to claimant about what they had overheard during his closed door meetings with the owner. His attempt to mitigate the owner’s behavior by complaining to his immediate supervisor, the employer’s vice president of sales, was unsuccessful as that individual’s response was that “all his loyalty was to the owner” and that claimant was “expendable.” He chose not to complain to the human resources officer because he knew that individual was close to the owner and any complaint would similarly be futile.

We agree with the ALJ that although typically an employee should expect to occasionally encounter some degree of criticism and perhaps even impolite behavior from a business owner when discussing his

performance for that business, claimant's experience, as described, exceeded any permissible bounds. Hearing Decision 18-UI-101887 at 3-4. The owner did not testify at hearing regarding any contrary account of his meetings with claimant, and the employer's human resources officer admitted that he was aware that the owner often raised his voice and used "strong language" when speaking to some employees. Audio Record ~ 33:00 at 33:45.

On this record, claimant established that a reasonable and prudent account executive of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would have concluded that he or she had no reasonable alternative but to leave work when claimant did. Accordingly, 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-101887 is affirmed.

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

DATE of Service: March 2, 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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