

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0127

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152804). Claimant filed a timely request for hearing. On January 11, 2018 and January 31, 2018, ALJ Meerdink conducted a hearing, and on February 2, 2018 issued Hearing Decision 18-UI-102424, affirming the Department's decision. On February 6, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) The Confederated Tribes of Warm Springs employed claimant as tribal health liaison from April 4, 2016 to October 20, 2017.

(2) The employer's tribal council eliminated claimant's position effective January 2018. In June 2017, claimant's supervisor developed a plan to transfer claimant to a case management position. Claimant's supervisor intended the new position to be a lateral transfer and that claimant's pay and benefits would remain the same. She believed based upon her experience with prior situations that she would achieve that goal. In June and September 2017, claimant's supervisor notified claimant of the forthcoming transfer and her intent not to change claimant's pay or benefits.

(3) Claimant did not want the new position because it was not consistent with her career goals and areas of expertise. Claimant also had concerns about the work environment and thought the supervisor denigrated and retaliated against her. Claimant began seeking other work and believed the employer

supported her efforts to find a new job. In September 2017, claimant was nominated for an elected position on the Board of Trustees for the Confederated Tribes of the Umatilla Indian Reservation.

(4) Over time, the employer developed a variety of concerns about claimant's job performance, including not timely obtaining travel authorizations or submitting reimbursement forms, not keeping her work calendar updated, failing to submit time cards, and failing to maintain contact with the office when she was traveling or otherwise working outside the office. In September 2017, the employer's finance department suspended claimant's travel privileges because of her failure to comply with policies.

(5) On October 13, 2017, claimant traveled to Pendleton, Oregon for work, and remained in Pendleton until late afternoon October 16, 2017. On October 17, 2017 and October 18, 2017, claimant worked remotely from the office. Claimant did not contact her supervisor or otherwise maintain contact with the office between October 13th and October 18th. Claimant assumed the supervisor knew where she was.

(6) Claimant's supervisor did not know where claimant was, and when she learned claimant had not been working at the office that week she believed claimant had been absent without notifying the employer. On October 18, 2017, claimant's supervisor met with claimant at the employer's office, reprimanded her and notified her she was being placed on a corrective action plan. The terms of the plan required claimant to check in at the office every work day by 8:00 a.m., keep her calendar and timecard up to date, and obtain permission to be out of the office. The plan would be placed in claimant's employee file, and removed after one year of compliance with it.

(7) Claimant disagreed with the terms of the plan, did not want it placed in her employee file, and asked her supervisor what her options were. The supervisor told claimant she could accept and adhere to the plan or quit work. Claimant thought that her personal family obligations and the election would prohibit her from being at work every day, and that she would be unable to comply with the corrective action plan. She concluded without asking or being told that the supervisor would not allow her to flex her work hours or take unpaid leave to attend to personal matters, and thought the supervisor was retaliating against her.

(8) Claimant decided to quit work in two weeks, but then asked for time off the following week. The supervisor told claimant she would not approve the time off because claimant had just resigned, and it did not make sense to take time off work when she had work to do in the office before she quit. The supervisor then said claimant had a third option of being terminated, and claimant agreed she would resign effective October 20, 2017 so she could take care of her personal business the following week.

(9) On October 20, 2017, claimant voluntarily left work.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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.

Claimant testified that she quit work for a variety of reasons, including that her supervisor called her a bad mother; prohibited her from running during her lunch breaks; retaliated against her by restricting her travel; eliminated her position and either offered or did not offer to transfer her into a new job that did not pay as much, was not aligned with claimant's career goals, and was likely to be eliminated in the future; failed to support claimant's search for other work; and that it would have been impossible for claimant to try to meet the supervisor's demands as set forth in the corrective action plan.¹ Whether considered individually or collectively, claimant did not show good cause for quitting work for those reasons, as explained herein.

Claimant alleged that her supervisor denigrated her character by calling her a bad mother. The preponderance of the evidence in the record shows that the supervisor did not call claimant a bad mother, nor did she imply that claimant was a bad mother. *See* January 11, 2018 hearing, Transcript at 21; January 31, 2018 hearing, Transcript at 14-15, Transcript at 37-38.

Claimant alleged that her supervisor negatively affected her physical and mental health by prohibiting her from running during her lunch breaks. The preponderance of the evidence in the record shows that the supervisor did not tell claimant she was prohibited from running during her breaks or imply that she should not run during her breaks. January 31, 2018 hearing, Transcript at 14-15, 24-25. Rather, the supervisor encouraged claimant that "it might be in her best interests" to run during traditional lunch break hours to avoid the perception among other employees that she was taking extra breaks. *Id.* at 24-25. The supervisor's advice was not unreasonable and did not amount to creation of an unhealthy work environment for claimant.

Claimant alleged that the supervisor retaliated against her by restricting her travel. January 11, 2018 hearing, Transcript at 47. The preponderance of the evidence shows that she did not. The employer's finance department restricted claimant's travel, not the supervisor, and it did so in response to claimant's repeated violations of written travel policies. January 31, 2018 hearing, Transcript at 26-27.²

Claimant also alleged that she quit work because her position as tribal health liaison was being eliminated, and that the employer both offered her a new position that did not pay as much and was not aligned with her career goals and did not offer her a new position. As a preliminary matter, both of those allegations cannot be true. To the extent claimant quit work because the employer did not offer her a new position, the record does not support claimant's assertion. Claimant was not credible that her

¹ To any extent claimant claimed that other factors influenced her decision to quit, including concerns about her physical and mental health and a hostile work environment, the concerns claimant raised were generalized and she did not show more likely than not that, considered individually or collectively, they were of such gravity that she had no reasonable alternative but to quit work. We therefore found it unnecessary to address those factors individually.

² We also note that claimant's testimony regarding the travel restrictions was inconsistent, as she claimed in turn that there was no travel ban and also that she was aware of a travel ban in September 2017. *Compare* January 31, 2018 hearing, Transcript at 78, 86-87.

supervisor did not discuss the elimination of her position as liaison and transfer into a new position at least two times between June 2017 and September 2017, or that the supervisor did not offer her or inform her about her plan to retain claimant as an employee by laterally transferring her into a different position. To the extent she quit work because the new position offered did not align with her career goals or areas of expertise, claimant did not show that the new position was unsuitable for her, posed a grave situation, or that no reasonable and prudent person would have accepted the job rather than quit before trying the new position. Claimant's "lack of interest" in the new job did not amount to good cause to quit work. *See* Claimant's written argument.

To the extent claimant quit work because the new position paid less than the old position, claimant also did not have good cause for quitting work. Claimant claimed both that pay was not discussed with her and that she understood the new position paid less than her old one, making that the new position a bad fit for her. *Compare* January 11, 2018 hearing, Transcript at 15, 39-40. As a preliminary matter, the record fails to show how claimant could form an understanding about the pay rate of the new position without the difference in pay rate "really" being "described" to her. *Id.* at 15. The record also fails to show that the pay rate of the offered position would have been less than her old position paid. Although the new position had not been graded at the time claimant quit work and the pay rate therefore had not been established, the general manager had experience reclassifying existing employees and obtaining lateral pay for them, she was going through the budget process, had internal discussions with those involved in establishing the pay rate, was prepared to justify maintaining claimant's current salary; in the supervisor's experience, she "didn't see any problem in doing a lateral transfer" and "was not going to take away her pay." January 31, 2018 hearing, Transcript at 40, 41-41, 43, 46-47. Given those factors, the preponderance of the evidence fails to show that the employer planned to reduce claimant's pay if she accepted the lateral transfer the employer offered her.

To the extent claimant quit work rather than accept the new position because she thought its funding was not stable, or that the new position was going to be eliminated as well, the record fails to show she had good cause for quitting. Although the employer appeared to have had "budget issues" that could potentially have affected her continuing employment, and "there's no way for her or anybody to say that this position would even be available or longstanding," claimant did not show it was more likely than not that the new position was temporary or would be eliminated before she transferred into it. January 11, 2018 hearing, Transcript at 39-40. To the extent claimant was concerned that it might, she did not establish in this hearing record that she had reasonably convincing reasons to believe that the new position was going to be eliminated. To the extent she had such reasons but did not explain them in the hearing, the record also fails to show that she raised her concerns with the supervisor or anyone else prior to quitting work, under circumstances where raising that concern would have been a reasonable alternative to quitting work when she did.

Claimant alleged that she had good cause to quit work because the employer failed to support claimant's search for other work. *See* Claimant's written argument; January 31, 2018 hearing, Transcript at 10. OAR 471-030-0038(5)(b)(A) provides that leaving work without good cause includes leaving suitable work to seek other work. Having considered claimant's description of her working conditions, including her ill-founded and somewhat internally inconsistent allegations of hostility, retaliation, and the alleged effect of the working environment on her health, we conclude that claimant's work with the employer was, at the time she quit work, suitable, and that to the extent she left that job to seek other work, she left without good cause.

In written argument, claimant also averred that the employer had been supportive of her work search until her October 18, 2017 meeting with the supervisor, but after that meeting she “reasonably believed the employer had changed its position and would now no longer support claimant’s reasonable efforts to find a new job.” Claimant’s complaint about the employer’s position on her work search appears to be founded on the employer’s refusal to allow claimant time off work the week following October 18th to campaign for election. We do not find it unreasonable that an employer, given notice of an employee’s intent to resign and in need of the employee’s services to wrap up her duties, would deny the employee’s request for unpaid time off work. Nor do we find that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working under those circumstances.

Finally, claimant alleged she quit work in part because it would have been impossible for her to meet the supervisor’s demands as set forth in the corrective action plan. The conditions of the plan, however, included basic employee responsibilities that all employees are typically expected to fulfil, like reporting to work on time for scheduled shifts and performing her duties in accordance with the employer’s policies. Claimant’s concern or belief that she might not be able to meet those requirements due to her family’s situation, job search or other factors was not a situation of such gravity that she had no reasonable alternative but to quit work rather than try to comply with them. In the alternative, rather than quitting, claimant had the reasonable alternative of discussing her concerns about the requirements with the supervisor to ascertain whether the concerns were valid. We also note that claimant’s allegation that the supervisor was retaliating against her with respect to the corrective action plan and had “created barriers for me to even be successful” and make it “impossible” to “work with her and expect her to be honest and fair” were not supported by the preponderance of the evidence. *See* January 11, 2018 hearing, Transcript at 13, 17, 23.

For the foregoing reasons, we conclude that claimant voluntarily left work without good cause. She therefore is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 18-UI-102424 is affirmed.

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

DATE of Service: March 6, 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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