

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0141

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 144835). Claimant filed a timely request for hearing. On January 22, 2018, ALJ Shoemake conducted a hearing, and on February 1, 2018, ALJ M. Davis issued Hearing Decision 18-UI-102214, affirming the Department's decision. On February 7, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision to the extent it was relevant and based upon the hearing record.

FINDINGS OF FACT: (1) Saraveza Inc. employed claimant as an event coordinator and manager from November 1, 2008 to December 7, 2017.

(2) On August 1, 2016 and August 5, 2016, claimant complained to the owner about the chef's behavior toward him. During that meeting, claimant reported that the chef had a short temper, threw tantrums, screamed at him, and engaged in bullying and sexism. He told the owner that he did not feel at ease with the chef, and had continued to feel distraught for days after a negative interaction.

(3) The owner spoke to the chef, but did not tell him that he had been harassing claimant, discriminating, or to stop yelling at claimant. The owner then returned to claimant to describe her conversation with the chef, and described the chef's negative feedback about claimant's performance at work. The owner did not reprimand the chef for his behavior.

(4) Thereafter, the chef continued to harass claimant. He screamed at claimant over mundane business matters when claimant gave him feedback. He was rude and mean to claimant then would immediately interact with others in a jovial manner, which made claimant feel isolated from his coworkers. He turned his back to claimant when claimant talked to him, interrupted claimant when he talked, and otherwise demonstrated his disrespect for claimant. On one occasion the chef prepared a bratwurst for claimant to eat, and laughed and said enjoy it when he served it to claimant. When claimant returned,

the chef analogized the bratwurst to a penis, and asked how much claimant had enjoyed it and whether he “took the whole thing down.” Claimant felt very embarrassed.

(5) Between August and November 2017, claimant and the owner had weekly meetings during which claimant frequently complained about the chef. The owner knew the chef was hotheaded and had a temper, knew the chef yelled at claimant, and knew claimant was bothered by the behavior. The owner made allowances for the chef’s behavior because he had a heavy workload, and never sat down with the chef and asked him to stop yelling at claimant. Instead the owner gave claimant feedback about how to cope with the chef’s temper tantrums and advise him to learn the chef’s work style. Claimant continued to complain until early summer 2017, when the owner told claimant that she knew about the chef but she did not want to hear about it anymore. Claimant stopped complaining.

(6) In November 2017, the owner spoke with claimant about his own performance after noticing that he was “fading into the background” and “not being very present” at work. Audio recording at ~ 11:00. Claimant attributed his own declining performance to the chef’s behavior making him feel that he could not do his job and did not want to be at work. During the meeting, claimant again told the owner he felt “unsafe” at work, and had for about a year and a half, because of the chef’s temper tantrums and harassment. Audio recording at ~ 9:30.

(7) After the meeting claimant thought about the situation. The chef’s treatment made claimant cry at times and prevented him from doing his job. He felt “[i]t’s like a lower-case t trauma every day I go into work.” Audio recording at ~ 20:30. Claimant decided to quit work, and emailed his resignation to the employer with four weeks’ notice. In response, the owner said, “I’m okay with this.” Audio recording at ~ 21:25. The owner did not intervene on claimant’s behalf, and the chef’s behavior toward claimant did not improve, between the date he gave notice and December 7th. Claimant continued to feel unsafe at work.

(8) Effective December 7, 2017, claimant quit work.

(9) On December 31, 2017, the owner sent an email to claimant acknowledging that he had not felt safe or comfortable at work. The owner stated, “It bugs me that I couldn’t tap into that and probably distorted what was actually going on to fit the dialogue in my head.” Exhibit 1.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant quit work with good cause.

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

The ALJ found as fact that the owner “believed that the issues between claimant and chef were resolved” and that while claimant “expressed frustration about the chef . . . he did not ask the owner to do anything about the situation” and the owner “was not aware that claimant felt harassed by the chef.” Hearing Decision 18-UI-102214 at 1. The ALJ concluded that claimant voluntarily left work without good cause because while he “may have faced a grave situation” because of the chef’s behavior, because the owner had been responsive to claimant’s August 2016 complaints about the chef he “could have gone to the owner again and at the very least, stated that he would quit if she did not do something about that chef’s behavior or that the chef’s behavior was impacting his ability to perform his own job duties.” *Id.* at 2. We agree with the ALJ that claimant faced a grave situation; however, we disagree with the ALJ that claimant had reasonable alternatives to quitting work.

The chef harassed, screamed at, isolated and disrespected claimant at work. The chef’s behavior toward claimant, on this record, appears so extreme as to constitute a grave situation for claimant. Claimant had no reasonable alternatives but to quit work because of that behavior. It was not reasonable under the circumstances described for the owner to believe that claimant’s concerns about the chef’s behavior toward him were resolved. Claimant had frequently complained about the chef for approximately a year, and the owner knew that the chef yelled at claimant and that the chef’s behavior bothered claimant. Rather than intervening to resolve the situation, the owner counseled claimant to learn the chef’s style and cope with his yelling, and ultimately in the summer of 2017 told claimant that his complaints about the chef were no longer welcome. Given the protracted nature of claimant’s complaints, the owner’s failure to appreciate the significance of claimant’s complaints are not attributable to claimant’s failure to adequately communicate the nature of his concern, but strongly suggests that continuing to complain about the chef to the owner would have been a futile exercise for claimant. Similarly, the chef was aware of his own behavior, and was on notice from August 2016 that claimant did not like it, but continued to engage in harassing behavior toward him and to scream at claimant over mundane business matters. It therefore would have been futile for claimant to complain to the chef and ask him to change his behavior.

No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working for an employer that allowed the chef to scream at, harass and belittle him for over a year without taking action to rectify the situation. Claimant therefore voluntarily left work with good cause. He is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 18-UI-102214 is set aside, as outlined above.¹

J. S. Cromwell and S. Alba;
D. P. Hettle, 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

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.

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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