

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0204

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 5, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83247). Claimant filed a timely request for hearing. On February 14, 2018, ALJ Janzen conducted a hearing, and on February 15, 2018 issued Hearing Decision 18-UI-103315, affirming the Department's decision. On February 22, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Luann Davison Agency, Inc. employed claimant from September 29, 2017 to December 13, 2017.

(2) The employer operated a State Farm insurance business. Due to the rules under which the employer's business operated there was very little work for non-licensed individuals. The employer treated its front desk receptionist position as a "rotating" chair, a way to introduce employees to her business while they pursued a license that would enable them to perform a full range of job duties. Audio recording at ~ 25:15. Due to the high turnover in the "rotating" position the employer's owner and others referred to the receptionist position as "Emily," referencing a movie in which an overbearing employer did not bother to learn assistants' names and instead called them all "Emily."

(3) The employer hired claimant as a front desk receptionist. At hire, the owner talked with claimant about becoming a licensed insurance agent, which, if successful, would result in claimant getting a raise and a bonus. Claimant agreed that she wanted to try to get licensed, and the owner paid for claimant to undergo a training program. Claimant worked as a receptionist while undergoing training.

(4) Claimant disliked references to the "Emily" position, and felt it was degrading. On November 8, 2017, claimant notified the owner that the licensing program was not a good fit for her and that she no longer wanted to pursue it. Claimant said in her November 8th email to the owner that she was "[n]ot sure where exactly this will leave me" and asked the owner to "[l]et me know what happens next please." Exhibit 1.

(5) The owner needed to recruit a new receptionist to undergo licensing training to fulfill the business's needs. It did not have receptionist work available for individuals who were not undergoing licensing training. The owner wanted to keep claimant employed, however, and began assigning other tasks to claimant, including organizing files, organizing closets, doing the dishes, cleaning the floor, and other miscellaneous cleaning tasks. Claimant was increasingly unhappy with the tasks she was assigned, particularly after someone told her that she should use her fingernail to remove dust between the floorboards. She felt that the owner had hired her as a receptionist, and the cleaning tasks she was being assigned were not the sort of tasks most receptionists were asked to perform. Claimant was, at all relevant times, physically capable of performing the duties she was assigned. Claimant did not discuss her concerns with the employer.

(6) Sometime prior to 9:18 a.m. on December 13, 2017, the owner told claimant to “dress[] accordingly to clean up the parking lot” tomorrow when she came to work. Exhibit 1. Claimant felt that being asked to clean the parking lot was “just way beyond not okay.” *Id.* She felt it was too cold outside, and that “blowing leaves and cleaning up the parking lot is not the job of a receptionist and I will no longer be letting myself stoop down this low to perform these tasks for you.” *Id.* On December 13, 2017, claimant sent the owner an email outlining her objections to the duties she was being assigned and quitting 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 quit work because the owner assigned her tasks she felt were unsuitable for a front desk receptionist. At all relevant times, however, claimant was physically capable of performing the assigned tasks, and did not argue or establish that performing them was hazardous to her health, safety or morals. Although claimant considered the tasks ill-suited to a receptionist, we cannot say that in a small business such as the owner described that employees are not regularly called upon to perform a variety of cleaning duties in addition to more traditional office tasks. On this record, it does not appear that the types of tasks the owner assigned to claimant amounted to a grave situation.

Moreover, even if it was, it is notable in this case that the record fails to show that claimant complained to the owner about the tasks she was being assigned prior to resigning on December 13th. Claimant understood that her withdrawal from the training program would affect her employment, as demonstrated by her statements to the owner about not knowing “exactly where this will leave me” and her request for the owner to “[l]et me know what happens next.” However, when the owner began assigning claimant cleaning tasks claimant felt were “odd ball tasks . . . cosmetically, around your

office,” the record does not show that claimant told the owner the tasks were “odd ball” or inappropriate, or asked the owner to assign her tasks she felt were more traditionally aligned with those of a front desk receptionist. The record fails to show that claimant asked the owner why she was being assigned “odd ball tasks” instead of receptionist tasks, or, prior to her resignation email, let the owner know that she considered the tasks she was being assigned inappropriate. It appears on this record that discussing her concerns with the owner, asking to be assigned different types of tasks, or asking not to be assigned cleaning tasks she considered demeaning, were all reasonable alternatives to quitting work without having informed the employer of her dislike of the tasks or asked the employer to resolve her concerns about her assignments.

Claimant therefore quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 18-UI-103315 is affirmed.

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

DATE of Service: March 22, 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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