EO: 700
BYE: 201901

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

735
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0277

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72742). Claimant filed a timely request for hearing. On March 1, 2018, ALJ Shoemake conducted a hearing, and on March 5, 2018 issued Hearing Decision 18-UI-104435, affirming the Department's decision. On March 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Northwood Manufacturing, Inc. employed claimant on the truck/camper production line from July 18, 2010 to December 20, 2017.

(2) Claimant and a coworker were friends until early September 2017, after which time the coworker became "very hostile" to claimant. Audio recording at ~ 7:50. In October 2017, the coworker made a "mooing" noise claimant felt was intended to insult her as she walked by. *Id.* at ~ 8:40.

(3) On December 7, 2017, the coworker called claimant a "cunt." *Id.* at 8:10, 9:35. Claimant immediately told her group leader that she wanted to make a "formal complaint that [the coworker] called me a 'cunt.'" *Id.* at 9:45.

(4) The group leader told the plant manager that claimant and the coworker "aren't gettin' along," that it was starting to "get a little bit out of her control," and that "she wanted [the plant manager] to speak to them." *Id.* at 21:20. The plant manager did not know what happened on December 7th and did not ask. *Id.* at ~ 20:25, 21:05.

(5) The plant manager called claimant and the coworker into his office. He did not ask either of them what had happened between them. The plant manager told them both that they had received and signed for the company handbook, and read to them that the handbook said "that any type of harassing or intimidating, coercing or using any assaulting language or abusive language towards each other will and could result in immediate grounds for termination." *Id.* at ~ 21:35-22:05. The plant manager told them that that applied in "either direction, whomever is right or wrong doesn't matter, that is not going to be

tolerated on our property, on our premises;" he then directed them to return to work. *Id.* Claimant understood that if anything happened from that point on, or if she complained about her coworker again, both she and her coworker would be discharged. *Id.* at 10:20.

(6) On December 15, 2017, the coworker called claimant a "fucking tattletale" for complaining to management. *Id.* at ~ 7:28. On December 18, 2017, the coworker called claimant a "lazy bitch." *Id.* at 7:43, 12:10. Claimant did not respond to the coworker, and did not complain to her group lead, the plant manager or human resources because the last time she complained her job was threatened. *Id.* at 14:30.

(7) Claimant last worked for the employer on December 20, 2017. When claimant left work on December 20th, she did not intend to return to work for the employer, and she did not contact the employer again. The employer processed her work separation effective December 29, 2017.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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.

The ALJ concluded that claimant quit work without good cause because, although "[c]laimant felt that the coworker was harassing her," which "may have been grave," and she "may have felt uncomfortable reporting it to her supervisor, she could have taken her concerns to the employer's human resource department," which the ALJ concluded was a reasonable alternative to quitting work. Hearing Decision 18-UI-104435 at 2-3. We disagree.

Claimant's coworker used abusive and harassing language toward her, and retaliated against her for complaining to the employer by calling her a "fucking tattletale." When claimant approached the group lead to make a "formal complaint" about her coworker's behavior, the plant manager communicated to claimant that if any additional abusive or harassing conduct occurred between claimant and the coworker in "either direction, whomever is right or wrong doesn't matter, that is not going to be tolerated," and they will or could be immediately discharged. At the time, the plant manager did not know or ask anyone what had actually happened, and thought "there were words exchanged, you know, could have been between both of them, who was right or wrong." Claimant reasonably believed that if she complained about her coworker again that, regardless whether or not she was at fault, it was likely she would be discharged. Given what happened when claimant tried to complain to her group lead and the plant manager, no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would consider complaining to the group lead or plant manager a reasonable alternative to quitting work.

With regard to complaining to human resources, the record also fails to show that doing so was a reasonable alternative to quitting work. Claimant testified at the hearing that although the employer had a human resources department, she did not have easy access to human resources, she had not talked to the human resources person in years, he worked in another plant, and she thought the plant manager would discharge her if she complained again about her coworker. Audio recording at ~ 14:00. The plant manager testified that "all" claimant needed to do to get a meeting with human resources was to contact him or her group lead, and they would "immediately, as soon as possible" set up a meeting for claimant. *Id.* at 20:05. However, the record shows that when claimant attempted to make a "formal complaint" about her coworker, she was not given the opportunity to explain what had happened and was instead told that if anything further happened, "could have been between both of them, who was right or wrong," it could result in both of them being discharged. *Id.* at 24:17. Under those circumstances, no reasonable and prudent person would conclude that complaining to human resources was a reasonable alternative to leaving work.

Claimant therefore quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 18-UI-104435 is set aside, as outlined above.[1]

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

DATE of Service: <u>April 11, 2018</u>

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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[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.