

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0429

Modified
Disqualification – Effective Week 04-18

PROCEDURAL HISTORY: On February 28, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 154818). Claimant filed a timely request for hearing. On April 12, 2018, ALJ Janzen conducted a hearing and issued Order No. 18-UI-107277, modifying the Department’s decision, only to change the effective date of the disqualification to January 14, 2018. On April 27, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant’s written argument contained information that was not offered into evidence during the hearing and did not explain why she was unable to present the information at that time, request a continuance to allow her son to testify when he was not undergoing dialysis treatment, or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. Accordingly, under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090, EAB only considered the hearing record, and claimant’s written argument, to the extent it was based on the record, when reaching this decision.

FINDINGS OF FACT: (1) Table Rock Motel LLC employed claimant as a housekeeper and office worker from July 13, 2017 to January 23, 2018.

(2) On January 10, 2018, claimant questioned a coworker when she arrived to work about why she had texted a temporary acting manager, working offsite, the previous day about not being able to work due to illness rather than notifying claimant, working at the motel office, about that issue. The coworker believed claimant questioned her angrily, which upset her and caused her to go home, where she communicated with the acting manager about claimant’s conduct. The acting manager had received complaints from other coworkers about claimant’s communications with them, so she spoke with the owner about taking claimant off the schedule for a while to send her a message instructing her to improve her attitude, to which the owner agreed. That afternoon, she called claimant, explained her unhappiness with claimant’s communications with coworkers and then told her to “take some time and get a better attitude.” Audio Record ~ 8:30 to 11:00. The manager believed she had told claimant to

call her on January 16 to discuss claimant's return to work, but claimant believed no time frame for returning to work or calling the manager had been given.

(3) On January 16, 2018, claimant did not contact the employer and so the acting manager and owner assumed she no longer wanted to work for the employer and had quit. However, the employer did not ask claimant to return her keys. Between January 10 and January 21, 2018, claimant did not contact anyone at the employer about her work status or schedule.

(4) On January 21, 2018, claimant contacted the owner and told him she thought she had been "laid off." However, the owner responded that it was his understanding that she had quit since she did not call the employer on January 16, 2018. Audio Record ~ 8:30 to 11:00.

(5) The employer's payday was January 20, 2018. On January 23, 2018, claimant went to the employer's motel to pick up her check, but was told by the acting manager that she had mailed it to her home address the previous day. When claimant spoke with the acting manager, she also threatened her about filing a complaint with the Oregon Bureau of Labor and Industries (BOLI) and then turned in her keys, without being asked to return them.

(6) Continuing work was available to claimant up to January 23, 2018.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

At hearing, claimant asserted that she was discharged and the employer asserted that claimant quit. Audio Record ~ 8:30 to 9:00; 24:00 to 25:30. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving; if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so, the separation is a discharge. OAR 471-030-0038(2) (August 3, 2011). When claimant spoke with the acting manager on January 23, 2018, her first interaction with her since January 10, rather than attempt to explain that there had been a misunderstanding about their January 10 conversation and that she wanted to return to work, claimant threatened her with a BOLI wage complaint, turned in her keys, without being asked to do so and then "stormed out" of the office. Audio Record ~ 36:55 to 37:30. The record therefore shows that claimant could have continued to work for the employer, but as of January 23, 2018, was unwilling to do so. Accordingly, the work separation was a voluntary leaving that occurred on January 23, 2018.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 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.

Because claimant variously asserted that she had been discharged or “laid off” from her employment, she never specifically explained why she voluntarily left work when she did. On this record, claimant left work because she believed the acting office manager was often disrespectful and accusatory when talking to her and made arbitrary staffing decisions which made little sense. Audio Record ~ 11:00 to 12:30. While claimant’s workplace may have been somewhat unpleasant for those reasons, viewed objectively, claimant failed to establish that her concerns constituted reasons of such gravity that no reasonable and prudent person of normal sensitivity would have concluded that under those circumstances, she had no alternative but to quit her job. And to the extent claimant voluntarily left work because she mistakenly believed she had been discharged, she failed to show that no reasonable and prudent person would have informed the acting manager on January 23, 2018 that she was willing to continue working for the employer instead of indicating by her behavior that she was not.

Claimant voluntarily left work without good cause on January 23, 2018. The ALJ’s order is modified to change the effective date of the disqualification from the week of January 16, 2018 to the week of January 23, 2018, and claimant is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 18-UI-107277 is modified, as outlined above.

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

DATE of Service: May 31, 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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