

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0604

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work for the employer without good cause (decision # 102802). Claimant filed a timely request for hearing. On May 15, 2018, ALJ Monroe conducted a hearing, and on May 22, 2018 issued Order No. 18-UI-109830, affirming the Department's decision. On May 30, 2018, ALJ Monroe issued Order No. 18-UI-110310, amending and correcting Order No. 18-UI-109830, but not substantively changing its outcome. On June 13, 2018, claimant filed an application for review of Order No. 18-UI-110310 with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not a part of the hearing record. Claimant did not explain why she was unable to offer this information during the hearing or otherwise show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider claimant's new information when reaching this decision.

FINDINGS OF FACT: (1) Redmond Council for Senior Citizens employed claimant from approximately 2012 until February 23, 2018, last as kitchen manager. The employer contracted with the Council on Aging to provide meals on wheels to seniors living in its service area.

(2) Before January 2018, the employer paid its employees on the 25th day of each month for the pay period running from the 26th of the previous month through the 25th of the current month. On December 22, 2017, the employer notified its employees that beginning in January 2018, although the monthly pay period would continue to run from the 26th of the previous month through the 25th of the current month, the pay day would be changed from the 25th of the month to the last day of the current month. The employer made this change to account for the fact that because it generally did not receive the funds needed to pay employees until the 25th of a month, it had little cash in reserve and it needed to better control its cash flow to ensure it had sufficient funds to meet payroll. The employer later changed its payday from the last day of the month to the 1st day of the next month. These changes did not please claimant since she had an established schedule for paying her recurring monthly expenses, including her

house, vehicle and insurance payment, and she was required to contact her creditors to put a new payment schedule in place.

(3) On occasion, the employer's president gave claimant very little notice in informing her that the employer expected claimant to cook a meal for several more people than had been previously planned. This lack of notice displeased claimant. Sometime in January 2018, the employer's treasurer asked claimant if she had a key to a box that was kept in the weight room. Claimant did not. Claimant later overheard some discussions in the senior center in which she thought it was expressed that the employer believed she had damaged a computer modem that was stored in the box in the weight room. Claimant felt bullied by the employer's suspicion of her.

(4) Sometime around approximately the end of January 2018, claimant heard some rumors that a representative from the Council on Aging had brought up at a meeting of the employer's Board of Directors that if the employer did not reduce its kitchen expenses, the Council on Aging was going to stop contracting with the employer for meals on wheels. Claimant suspected that the employer might discharge her in order to reduce its expenses. Claimant also thought the employer might discharge her because the representative from the Council on Aging did not like her.

(5) On January 31, 2018, although it was the last day of the month and claimant thought it was payday under the employer's new schedule, paychecks were not distributed. Claimant spoke to the employer's president about her paycheck and learned that payday was actually on February 1, 2018. Because claimant did not receive a paycheck by the January date on which she was scheduled to make her recurring payments, claimant needed to withdraw funds from her savings to make those payments. Claimant was upset and told the president that she disliked the changes the employer had made to its pay schedule. However, claimant was effectively reimbursed for the funds she withdrew from her savings to pay her bills in January 2018 when she received a full paycheck on February 1, 2018.

(6) Sometime before approximately February 9, 2018, the employer changed its pay schedule based in part on claimant's complaints about not receiving her paycheck in time to make her recurring payments in January 2018. The employer changed its pay schedule to issue two paychecks each month, with a payday on the 5th of the month for the pay period from the 16th of the previous month through the end of the previous month, and a payday of the 20th of the month for the pay period from the 1st of the month through the 15th of the month. On February 9 or 10, 2018, the employer's treasurer informed claimant of this change to the pay schedule. Claimant was upset and did not want to make new arrangements with her creditors that took account of this additional change to the employer's pay schedule. Claimant told the treasurer that she was going to resign. On February 16, 2018, claimant again expressed to the treasurer that she was quitting. The effective date of claimant's resignation was to be February 23, 2018.

(7) On February 23, 2018, claimant voluntarily left work because she was upset about the employer's changes to its pay periods and paydays. Claimant also quit work, in part, because she felt she had been bullied by the employer and she believed the employer would discharge her if she did not resign.

CONCLUSIONS AND REASONS: 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.

From claimant’s testimony at hearing, it appeared that she left work due to the employer changing its pay periods and its scheduled paydays. Although claimant was likely inconvenienced by the need to contact her creditors to reschedule the dates on which she made recurring payments, she did not show that these changes or contacting the creditors to make the changes significantly harmed her or constituted a grave circumstance. As well, claimant’s need to access her savings to make the recurring payments that were due in January 2018 was not a grave circumstance since she should have been reimbursed for this one-time withdrawal from savings when she received a full paycheck on February 1, 2018. On this record, claimant did not show that the employer’s changes to its pay schedule were grave reasons for her to leave work.

Claimant also testified that she left work because of being bullied and because she thought she would be discharged if she did not resign. To the extent that either stated reason was a factor in claimant’s decision to quit, claimant did not show that either reason was good cause for doing so. The incidents claimant recounted at hearing as examples of bullying did not support that she was treated abusively or oppressively or in a manner that would have constituted a grave circumstances. *See McPherson v. Employment Division*, 285 Or 541, 557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits). With respect to claimant’s stated concern that she would be discharged, the fact that general discussions about reducing kitchen expenses had occurred, without more, is insufficient to establish that claimant was likely to be imminently discharged, as a cost saving measure or otherwise. As well, claimant failed to show that the influence of the representative from the Council on Aging was so pervasive over the employer’s Board of Directors that the representative’s dislike of claimant would likely lead to claimant’s discharge. On this record, claimant did not show that bullying or the prospect of being discharged was a grave reason to leave work.

Claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-110310 is affirmed.

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

DATE of Service: July 18, 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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