

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0641

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 92533). Claimant filed a timely request for hearing. On June 5, 2018, ALJ Monroe conducted a hearing, and on June 13, 2018 issued Order No. 18-UI-111203, affirming the Department's decision. On June 23, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Nashelle LLC employed claimant as executive assistant and office manager from December 2016 until April 15, 2018.

(2) In approximately October 2017, a serious dispute over the employer's operations arose between the employer's members, a married couple who managed the employer and owned a 49 percent interest (the "managers") and a second married couple who owned a 51 percent ownership interest (the "owners"). In the course of the dispute, the owners posted unflattering items about the members on social media sites. Claimant was upset about the posts.

(3) By April 2018, the employer's finances were troubled. Some bills had remained unpaid and outstanding for several months. Claimant was aware that the employer had received a notice that its electricity would be shut off due to non-payment on April 16, 2018. Although the employer had never failed to pay its employees on pay days, claimant had learned that the company the employer contracted with for payroll services was requiring the employer to make a deposit of \$20,000 to ensure that its upcoming payroll obligations were met. Claimant became concerned that on some future pay day(s) the employer would not have sufficient funds to pay its employees.

(4) On April 6, 2018, the managers informed the employer's staff, including claimant that they were resigning as the employer's day-to-day managers. At this time, claimant became concerned about the employer's financial viability because the owners had not been involved in the employer's day-to-day operations for approximately 15 months, since approximately January 2017.

(5) On April 11, 2018, the attorney representing the owners spoke with the employer's general manager and informed her that the owners would be assuming control over the employer's day-to-day management. The attorney then set up a meeting between the owners and the general manager for the next day, April 12, 2018, at which the owners expected that the general manager would provide an overview of the employer's financial position, upcoming expenditures and the overall status of the business to them. Claimant understood from the general manager that, at that meeting, the owners would reveal what their plan for the employer was going forward, and what steps they were going to take to try to secure the employer's financial stability.

(6) On April 12, 2018, in the morning, the owners and their attorney met with the general manager. Claimant attended that meeting at the general manager's request. The owners discussed with the general manager and claimant the employer's outstanding bills and the amount of funds the employer needed for purposes of inventory, meeting payroll and paying its bills that were due. The owners did not intend to provide a written business plan at the meeting because they thought they needed to gather detailed information about the operations and status of the employer's business before one could be prepared. Claimant and the general manager asked the owners to disclose the identities of any new investors and the amount of funds the new investors would contribute to the employer, and to make available a projected budget for the employer. The owners told claimant that "we're not ready to share that," "we need[] to obtain information first" and "that's not the purpose of this meeting." Transcript at 34. However, the owners assured claimant and the general manager that "we were confident everything would be okay," "we would take care of the company," "we would get it [the bills and payroll] covered," "everything would be taken care of," "the bills would be met" and "payroll would be met." Transcript at 35, 36, 37.

(7) After the meeting and on the same day, claimant and the general manager met with the employer's remaining staff and told them that the owners had not produced a business plan as they had expected at the meeting earlier that day. The staff joined in an email sent to the owners which demanded that the owners submit written plan disclosing the employer's financial backing and the identity of the person who would be assuming managerial control by 2:00 p.m. that day and, if the written plan was not forthcoming, all remaining staff would quit work effective immediately. After the owners received the email, they discovered that claimant and the general manager had publicized a sale of the employer's merchandise to generate sufficient funds to satisfy the employer's payroll obligations on the upcoming pay day of April 13, 2018. The owners went to the workplace and allowed the sale to proceed.

(8) On April 13, 2018, the employer met its payroll obligations. On that day, most of the employer's remaining staff quit work because the owners had not produced a written business plan. Also on that day, the owners disclosed to claimant and the general manager the identity of a new investor in the employer, and again provided assurances of the continued financial viability of the employer and the security of claimant's employment going forward. In response to the owner's request that day, claimant agreed to continue working for two weeks, and to decide at that time whether she was going to quit work.

(9) After speaking with the owners on April 13, 2018, claimant reconsidered her agreement to continue working for at least two weeks. Claimant remained concerned about the employer's financial position and its economic viability in light of the failure of the owners to provide a written business plan. During the night of April 13, 2018, claimant became physically ill at the prospect of continuing to work for the

employer when she believed that the employer might not be financially able to pay her. On April 15, 2018, claimant sent a resignation letter to the employer in which she stated she was quitting work, effective immediately.

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) (January 11, 2018). 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.

While claimant may have had subjective concerns about the employer’s financial stability, its future ability to employ her, and its having sufficient funds to pay her going forward, the standard for determining good cause as set out in OAR 471-030-0038(4) is claimant’s objective circumstances as evaluated from the perspective of a reasonable and prudent person. Notably, as of the date that claimant left work, the owners had just regained control over the employer’s operations. Claimant did not assert or show that there was an objectively reasonable basis for her to conclude that the owners were less able to effectively manage the employer’s operations, secure its financial stability, or pay its employees than had been the managers, during whose 15 month tenure claimant did not quit.

As well, it appears from the record that the owners were responsive to claimant’s stated concerns about the employer’s financial viability going forward and reasonably reassured her. The record further shows that the owners obtained the detailed information from claimant and the general manager needed to protect the employer’s cash flow and enable it to pay its obligations as they fell due, and disclosed the identity of the new investor. The record further shows that the owners allowed claimant to hold the April 12-13, 2018 sale she thought was needed to generate sufficient funds to meet the payroll on April 13, 2018, and permitted claimant to participate in and provide input during meetings to plan the employer’s transition to the owners’ management.

Furthermore, claimant did not suggest any reason that the owners not preparing and providing a written business plan to her, when they had only just taken over day to day control of the employer’s operations, without more, was an objectively grave circumstance, particularly when the owners were in the process of gathering the very information they needed to prepare a well-founded business plan. Nor did claimant show that, viewed objectively, the owners’ failure to produce the requested plan meant that the employer lacked financial stability, that its future employment of claimant was not likely, or that it was unlikely to have the means to continue paying claimant for her work. On this record, claimant did not show that the employer’s finances and circumstances were objectively grave at the time she decided to leave work.

Finally, while claimant also testified about various slanderous comments that the owners had posted on social media and the stress those comments caused her, claimant was quite clear that those comments

did not factor into her decision to leave work in any way. Transcript at 23-24. Because those comments were not a proximate cause of claimant's decision to leave work, they are not considered in this discussion.

In sum, claimant did not establish that she left work with good cause. Accordingly, claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-111203 is affirmed.

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

DATE of Service: July 25, 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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