

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0705

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82121). Claimant filed a timely request for hearing. On June 25, 2018, ALJ Snyder conducted a hearing, and on July 3, 2018 issued Order No. 18-UI-112548, affirming the Department's decision. On July 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information not in the hearing record, including statements from certain of claimant's coworkers who allegedly had information about the employer's hostile work environment. Claimant contended that the ALJ erred in not allowing these witnesses to testify at the hearing. At hearing, the ALJ questioned claimant at length about hostility she witnessed in the workplace or that was directed at her. It appears that testimony from claimant's witnesses on the same matters would largely be cumulative and repetitive of claimant's with respect to that alleged hostility. The ALJ did not err in refusing to allow those witnesses to testify. EAB has reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004).

Claimant also offered by way of her written argument certain emails from employer representatives which were not contained in the hearing record. Claimant did not explain why she did not present these emails during the hearing or otherwise show that she was prevented from doing so by factors or circumstances beyond her reasonable control as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) 1800 Flowers Team Services Inc. employed claimant as worker at Harry & David's from June 2005 until April 27, 2018.

(2) During her employment, claimant came to dislike the behavior of her direct supervisor and the manager to whom the supervisor reported. Claimant thought that both spoke to subordinates, including claimant, in belittling, disrespectful and demeaning ways, gave subordinates directives without understanding the exigencies of their particular jobs and did not listen to them. Many of claimant's coworkers agreed with her assessment of the supervisor and the manager.

(3) The supervisor's behavior that claimant considered offensive included that after claimant wrote a positive saying or daily aphorism on the white board behind her desk, as was her custom, her supervisor often would write next to it a saying of his own in Spanish, even though he was aware that no one in the office could read Spanish. On other occasions, the supervisor would for no apparent reason begin speaking in Spanish and when he was reminded that the office staff did not know Spanish, he would say "You need to figure it out." Audio at ~27:00.

(4) In October 2016, claimant asked the manager if the title of her job could be changed so that she would be considered a supervisor. Claimant wanted to advance her career and better herself. The supervisor told claimant that he would speak to management about her request and get back to her. Thereafter, claimant would periodically follow up on her request with the supervisor, but no action was ever taken on it.

(5) In August 2017, claimant had a performance evaluation with her supervisor. The supervisor "docked" claimant in the performance evaluation for not having any supervisory training. Audio at ~12:45. Claimant understood the supervisor to state in the evaluation that he would arrange for her to have supervisory training when it was next offered by the employer.

(6) Sometime around the fall of 2017, one of claimant's coworkers was experiencing difficulties with the supervisor and the manager. With other employees, claimant prepared a list of complaints that the affected coworker, other coworkers and claimant had with the supervisor and the manager. The complaints centered on the supervisor and manager's disrespectful behavior toward and poor treatment of them. The list of complaints was given to one of the employer's directors and culminated in the involvement of the employer's human resources department beginning around October 2017. Claimant met with a human resources representative and supplied information to him about the complaints against the supervisor and the manager. The employer's human resources department took action to resolve the matter by transferring the affected employee to another department and providing coaching to the supervisor and manager so they would interact with subordinates more courteously, respectfully and collaboratively. After having taken this action, the human resources department did not receive further complaints from employees who were subordinate to the supervisor and the manager, including claimant. The human resources department thought that it had resolved this matter to the satisfaction of the subordinate employees.

(7) Sometime around February 2018, claimant became aware that the employer was going to schedule some supervisory training in the future. Claimant asked her supervisor if she could participate in the training. The supervisor told claimant she could not because the training was limited to employees who

were in job positions that were designated in their titles as supervisory positions and her position was not.

(8) On April 23, 2018, claimant began a medical leave of absence. The employer expected claimant to return to work on May 30, 2018.

(9) On April 27, 2018, claimant sent an email to the employer notifying it that 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 his employer for an additional period of time.

Claimant’s stated reasons for quitting work was that her supervisor and manager treated her in ways that she considered offensive and she was told in February 2018 that she was not going to be allowed to participate in supervisory training since she did not hold a supervisory position. With respect to the supervisory training, claimant did not present evidence showing specific harms that she allegedly sustained from not being allowed to attend the training and that, more likely than not, her failure to receive the training gave rise to an objectively grave situation. With respect to the way claimant was treated by the supervisor and the manager, it appeared that claimant and other employees had participated in a very recent investigation of similar complaints of ill treatment brought by another employee and that claimant had spoken to the employer’s human resources department during the course of that investigation about that the supervisor’s and manager’s allegedly offensive method of treating employees. The employer had taken steps at that time to address the concerns raised and to ameliorate the effects of them on the affected employee by re-assigning that employee. Claimant testified that she did not later contact the human resources department in connection with her own complaints. The employer’s witness, a human resources representative, testified that the human resources department was not aware of claimant’s complaints or that, acting on behalf of the affected employee, it had not satisfactorily resolved issues arising from the supervisor’s and manager’s allegedly poor treatment of subordinates. Audio at ~35:13, ~35:56, ~37:26. The human resources representative further testified with apparent sincerity that had claimant raised ongoing complaints she had about the supervisor or the manager, the employer would have tried to assist claimant in resolving them, including trying to arrange for a transfer to a position under a different supervisor or manager or making some other form of accommodation. Audio at ~37:33. Assuming that the supervisor’s or manager’s treatment of her constituted a situation of gravity for claimant at the time she left work, by failing to contact the employer’s human resources department to seek a resolution of the situation, when she knew it had previously acted to rectify a similar situation raised by another employee, claimant did not pursue what was a reasonable alternative before quitting.

Claimant did not show that at the time she left work she faced a situation of gravity for which there was no reasonable alternative other than to leave work. Accordingly, claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-112548 is affirmed.

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

DATE of Service: August 14, 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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