

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0720

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 31, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 125741). Claimant filed a timely request for hearing. On June 27, 2018, ALJ Scott conducted a hearing, and on June 29, 2018 issued Order No. 18-UI-112355 affirming decision # 125741. On July 19, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY ISSUE: During the hearing in this matter, the employer's owner testified about text messages exchanged between her and claimant. Transcript at 54-56. The ALJ told the parties she would leave the record open for the employer to send her the messages. Although claimant stated that he did not object to the employer providing the documents, the ALJ did not state at hearing or in Order No. 18-UI-112355 that she was accepting the documents as Exhibit 1 or give the parties a chance to object to the documents. Because the documents were not admitted to the record and neither party was given the opportunity to respond to the documents, we did not consider them in making our decision. Had we considered the documents, it would not have changed the outcome of this decision.

FINDINGS OF FACT: (1) Bandon Inn, Inc. employed claimant as a maintenance supervisor from May 23, 2017 to May 15, 2018.

(2) The employer was dissatisfied with claimant's work performance because it believed he was not completing certain work duties. Claimant believed he had excellent job performance. The owner was also dissatisfied because it saw Facebook posts from claimant's wife about "bad bosses," and assumed it might be referring to the employer. Transcript at 37. The owner had a prior personal and working relationship with claimant's wife. The Facebook posts did not state anything about the employer. On May 10, 2018, the employer's owner contacted claimant's wife about the posts, and she did not respond. Afterwards, the owner sent claimant a text message stating she wanted to meet with claimant at 4:00 p.m. during his shift on May 11, 2018.

(3) On May 11, 2018, the employer's owner met with claimant to discuss the Facebook posts and claimant's work performance. During the meeting, before the owner began to discuss claimant's job performance, the owner asked claimant questions regarding his wife's Facebook posts. The owner used foul language during the meeting and called claimant a "fucking liar" when he responded to the owner's comments about the Facebook posts. Transcript at 38. Claimant became upset because he considered his wife's Facebook posts to be an inappropriate topic for a work conversation, and told the owner he refused to discuss it. Both the owner and claimant were upset and ended the meeting. The owner did not tell claimant he was discharged and claimant did not state he quit during the meeting. However, based on how the meeting ended, claimant told a coworker that the owner had discharged him. The coworker told the owner what claimant had stated. Claimant later returned to the owner's office, and the owner told claimant twice that she had not discharged him. Claimant heard the owner tell him she had not discharged him. She told claimant she would text claimant later about a meeting with claimant and his manager.

(4) Claimant was scheduled to work on May 12, 2018. He sent a text message to the employer's manager and stated that he was going to take a personal day off work. Sometime on May 12, the owner sent claimant a text stating that she would meet with him and his manager on his next scheduled day of work, May 15, 2018, at 12:15 p.m. Claimant was not scheduled to work on May 13 or 14, 2018 because those were his regular days off work. On May 13, 2018, the owner texted claimant and asked him if he would participate in a beach event sponsored by the employer. Claimant responded that it "depends on how the Tuesday [May 15, 2018] meeting goes." Transcript at 53.

(5) On May 15, 2018, claimant was scheduled to begin work at 8:00 a.m. Claimant did not report to work at 8:00 a.m. At 11:30 a.m., claimant arrived at work wearing his own clothing, not his work uniform, and told the manager he would not be returning to work because the owner had discharged him on May 11. He did not attend the 12:15 p.m. meeting with the manager and owner. Claimant did not contact the employer again.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature of the Work Separation. The claimant contended that the owner discharged him during the May 11, 2018 meeting by stating, "There's the door. You're done here." Transcript at 39. The owner asserted that the meeting ended with her asking how they should proceed, and that the employment relationship ended because claimant did not return to work for the May 15 meeting or thereafter. Accordingly, the first issue this case presents is the nature of the work separation. If claimant could have continued to work for the employer at the time the work separation occurred, the separation is a voluntary leaving. OAR 471-030-0038(2)(a) (January 1, 2018). However, if claimant was willing to continue to work for the same employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-0300038(2)(b).

Although claimant told a coworker on May 11 that the owner had discharged him, the record shows that the owner did not specifically state that she was discharging him, and even if the owner made ambiguous statements during the meeting that claimant understood as discharging him, the owner clarified that misunderstanding when claimant returned to the office and she unambiguously stated to claimant that she had not discharged him. The preponderance of the evidence shows that claimant understood from those statements that he was not discharged on May 11. First, he requested a personal

day off work on May 12, which he would not have done if he considered the work relationship already terminated. He also responded that he would “see how the Tuesday meeting goes” before saying if he would attend the employer’s beach event, indicating that he anticipated information about whether his employment would continue or not at the May 15, 2018 meeting. The employer showed it had continuing work available for claimant by scheduling a meeting with claimant on May 15, and attempting to arrange his participation in a work-related event after May 15. We conclude, therefore, that the work separation was a voluntary quit when claimant failed to report for work or the meeting on May 15, 2018, or contact the employer after May 15.

Voluntary Quit. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 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.

Because claimant contended the employer discharged him, he did not provide reasons for quitting. However, because claimant stopped reporting to work after the May 11 meeting, the content of that meeting more likely than not motivated his decision to leave work. Although the owner’s conduct during the meeting was unprofessional, the record does not show that such conduct had occurred before or that the owner regularly used foul language or called claimant names. Neither party alleged that the other was threatening or became physical during the meeting, and there were several days until the next meeting to allow both the owner and claimant to calm down before discussing employment matters again. Thus, to the extent that claimant left work because the owner became angry with claimant about his wife’s Facebook posts, used foul language and called claimant a “fucking liar,” claimant did not demonstrate that the final meeting constituted grave circumstances. To the extent claimant left work because he reasonably believed the owner discharged him during the May 11 meeting, claimant did not show he had good cause to leave work. As discussed above, it is undisputed that the owner told claimant on May 11 that she did not discharge him and claimant apparently understood he was expected to report to work on May 12 because he requested the day off from work. Moreover, although claimant may have believed the employer would discharge him at the May 15 meeting, at best, claimant showed only a mere possibility that the employer would discharge him then. Such a possibility does not create a grave situation that leaves an individual no alternative but to resign.

Because claimant failed to demonstrate that he had good cause to voluntarily leave work, he is disqualified from the receipt of benefits based on this work separation.

DECISION: Order No. 18-UI-112355 is affirmed.

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

DATE of Service: August 17, 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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