

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0722

Reversed
Disqualification

PROCEDURAL HISTORY: On June 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 82610). Claimant filed a timely request for hearing. On July 12, 2018, ALJ Seideman conducted a hearing, and on July 18, 2018 issued Order No. 18-UI-113315, concluding that claimant had good cause for voluntarily leaving work. On July 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dental Designs by Reza Saffari employed claimant as office manager from February 12, 2018 to June 6, 2018.

(2) Claimant and the employer's owner had worked together at another business for years, and claimant agreed to work for the owner after he purchased a new business. The new business was not as financially stable as they had initially thought. The owner was unable to immediately fulfill some of the terms of claimant's employment, such as providing full medical benefits and extended vacation leave; claimant believed that her compensation package included dental benefits that the owner thought he had not offered her.

(3) The owner's wife and son also worked for the business. Between February and May 2018, claimant noticed that the owner's wife became more critical of claimant. Claimant was off work from May 1, 2018 to May 12, 2018, and when she returned to work the employer had restructured job titles and office hours, and reallocated duties among staff, although claimant continued to work as the office manager.

(4) On May 30, 2018, the owner's wife began to micromanage claimant's work and became more critical of her. On May 31, 2018, claimant discussed the matter with the owner, who asked claimant to speak with his wife. Claimant tried to speak with the owner's wife, but she threw her hands in the air and closed herself in the bathroom, and refused to speak with claimant. The owner intervened and spoke with his wife at that time.

(5) On June 1, 2018, claimant tried to speak with the owner and his son about some insurance fee discrepancies, but neither had time to speak with her. On June 4, 2018, the owner's wife asked claimant to move out of her office so the owner's son could use it. The owner's wife also accused claimant of failing to answer the phones, and then stood watching claimant work for some period of time.

(6) On June 5, 2018, the owner's wife accused claimant of not telling the truth about something. Claimant spoke with the owner about his wife and asked to go home for the day. Later, claimant spoke with the owner about the business's chain of command and the owner confirmed that she answered only to the owner. Claimant told the owner that his son avoided her and his wife rolled her eyes when claimant asked her anything.

(7) After the June 5th conversations with the owner, claimant concluded it was "apparent that this would be the environment for some time." Exhibit 1. That evening, she decided to quit her job and, on June 6, 2018, gave the owner notice of her intent to leave her job on June 20, 2018.

(8) On the morning of June 6, 2018, after claimant had given notice of her intent to resign, the owner's wife told claimant she was "in denial" about some undisclosed thing, and said claimant had erased voicemail messages to hide the fact that she had missed some patient calls. Exhibit 9. Claimant decided to leave work immediately because "[t]he accusations and disrespect from other staff is unacceptable," and "I cannot continually defend myself and do my job efficiently." *Id.*

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that 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.

The ALJ concluded that claimant voluntarily left work with good cause, reasoning that "the problems" with the employer's business "just kept increasing," and "[c]laimant finally got to the point where she couldn't take the stress any longer and gave notice to quit. When the dentist's wife learned of that, she got mad at claimant, and claimant then quit immediately. Claimant's employment situation became so unfortunate that she had no reasonable alternative but to quit." Order No. 18-UI-113315 at 2. However, the ALJ's decision is not supported by the evidence.

The "good cause" standard in unemployment insurance cases involving individuals who voluntarily leave their jobs is not whether the "employment situation" was "so unfortunate," it is whether the situation is "of such gravity" that any person in the same situation would have "no reasonable alternative but to leave work." Claimant described a stressful work environment, apparently caused by the

employer's financial difficulties and the owner's wife's treatment of claimant, but she did not describe a grave situation that left her with no reasonable alternative but to quit.

For example, claimant had, the day before resigning, notified the owner that she thought he and his son were avoiding her. She did not establish that the ramifications of their failure to communicate were grave for her, nor did she assert or show that the owner was unwilling or unable to address her concerns or try to improve communication with her such that she had no reasonable alternative but to quit work immediately. Although the owner's wife micromanaged claimant and criticized her for things that she did not do, the owner confirmed the day before claimant quit that his wife did not have any authority over claimant or her position. Claimant did not establish on this record that the owner's wife's unfounded criticisms amounted to a situation of gravity. Nor, given that the owner had previously spoken with his wife after claimant complained, did claimant establish that it was more likely than not that the owner would have been unwilling or unable to do so again if claimant notified the owner of his wife's June 6th accusations or asked him to resolve her concerns. Nor is there evidence on this record that the owner's wife's criticisms were significant to claimant's employment, given that the owner's wife lacked supervisory authority over claimant at the time of the events at issue.

Claimant did not establish on this record that it was more likely than not that her working conditions, while unpleasant, amounted to a situation of such gravity that no reasonable and prudent person would continue working for the employer for an additional period of time. She therefore did not establish good cause for quitting work when she did, and must be disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 18-UI-113315 is set aside, as outlined above.

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

DATE of Service: August 23, 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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