EO: 200
BYE: 201922

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0829

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73256). Claimant filed a timely request for hearing. On July 30, 2018 and August 16, 2018, ALJ Amesbury conducted a hearing, and on August 16, 2018 issued Order No. 18-UI-115101, affirming the Department's decision. On August 22, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) ARS Fresno, LLC employed claimant as an assistant manager from May 22, 2014 to May 28, 2018.

(2) Claimant regularly worked weekends without assistance from the store manager. The employer expected claimant to find coverage for absentee employees, or, if unable to do so, often expected her to work the absentee employees' shifts herself. As a result, claimant regularly worked double shifts on weekends. She believed she was not always compensated for the overtime she worked and was unable to take time off work.

(3) Claimant was dissatisfied with the staffing levels, and believed the store was chronically understaffed, which caused her hardship. Claimant complained to her store manager about the understaffing and he was unresponsive; he did not increase the staffing levels at the store or do anything to alleviate the burden understaffing caused claimant when she was working.

(4) On May 28, 2018, the employer scheduled claimant to work from 7:00 a.m. to 3:00 p.m. Employees scheduled to work the second shift on May 28, called claimant to report that they would not be coming into work that day. Claimant tried to find coverage and could not. She repeatedly called and texted her store manager, but the store manager did not timely respond. She asked the assistant district manager for

help finding coverage, but the assistant district manager was not able to find anyone to help her. She spoke with the owner about staffing, but he yelled at her for spending too much time doing mandatory paperwork and did not offer any solutions to the understaffing problem, and when she told him she needed help he told her to "have a nice day" and walked out of the store. August 16, 2018 hearing, Transcript at 11. She spoke with the owner's second-in-command about the understaffing problem and he told her to "let it go." *Id.* at 10. When claimant finally talked to the store manager, he told her it was her job to "figure it out." *Id.* at 7. Claimant had sought help from human resources about another matter in the past and found them non-responsive, so she did not seek help from them on May 28th.

(5) Claimant understood based upon the employer's expectations and past practice that she would be required to cover the absentee employee's shift and work until 10:00 p.m. that night. She also understood it was likely she would be required to do the same the following day, resulting in back-to-back 15 hour shifts. Claimant felt overwhelmed, sick, tired, and unable to face working the double shifts. Claimant had gone to the doctor several times because she was not feeling well, and had been told her health problems were caused by stress, which she knew resulted from her working conditions.

(6) When claimant had specifically asked the owner, second-in-command, assistant district manager, and store manager for help with understaffing on May 28, 2018, and her requests were refused, claimant quit work effective immediately.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant voluntarily left work with 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 quit work without good cause, reasoning that while claimant clearly "had strong feelings about why she quit, in many instances her hyperbole and apparent contradictions in her testimony made it difficult to evaluate the concerns she expressed." Order No. 18-UI-115101 at 5. The ALJ pointed to claimant's testimony that her vacation requests "were always denied" and she "never" was paid for overtime, as compared to her acknowledgement that she was paid for some overtime and had taken a vacation a few weeks prior to quitting. We agree with the ALJ that claimant's testimony about those specific matters involved hyperbole, and thus was not persuasive. However the record showed that claimant readily acknowledged the inaccuracies involved in that specific testimony, so her use of mild hyperbole to describe those two situations did not render the remainder of her testimony implausible or unbelievable. As a result, where claimant's testimony was not self-contradicted or contradicted by other credible evidence, it had probative value and we relied upon it when reaching this decision.

The ALJ also stated that "by her own admission claimant did not bring most of her concerns to the attention of management beyond her immediate supervisor, nor did she take her concerns to employer's human resources section, both of which were apparently prepared to evaluate and act upon her concerns as necessary." *Id.* The preponderance of the evidence specifically refutes that statement. She had previously approached human resources about other matters. She had discussed understaffing with both her store manager and the assistant district manager. With respect to the final incident, claimant provided unrefuted testimony that she discussed her concerns about being understaffed on May 28th with the owner, second-in-command, assistant district manager, and her store manager. The assistant district manager also testified and confirmed that claimant had asked her for help with staffing and she had been unable to provide anyone to work with claimant that day. Given that the assistant district manager was unable to help her, it does not appear that "management beyond [claimant's] immediate supervisor . . . [was] prepared to evaluate and act upon her concerns." Given that the date in question fell over a holiday weekend, there is nothing in this record suggesting that human resources was on hand and available to "evaluate and act upon" claimant's "concerns" about understaffing on May 28th in any way that would have made a difference to claimant in that instance, or on an ongoing basis.

We agree with the ALJ that claimant "described a difficult work situation," but disagree that the record shows claimant failed or "declined" to "bring her concerns to the attention of upper management." Claimant was chronically understaffed during her shift but responsible for "figuring it out" even if doing so meant she had to work double shifts. She was facing working 30 hours in a 48-hour period, received no help from the owner and three higher-level managers, felt overwhelmed, sick, and tired, in the context of an individual who had repeatedly experienced ill health due to work-related stress that was so severe she had to seek medical treatment for it. We therefore conclude that claimant established by a preponderance of the evidence that the circumstances that caused her to quit work when she did were such that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for the employer, and would instead have had no reasonable alternative but to quit.

Claimant voluntarily left work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 18-UI-115101 is set aside, as outlined above.

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

DATE of Service: <u>September 24, 2018</u>

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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