

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0846

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90418). Claimant filed a timely request for hearing. On August 15, 2018, ALJ Schmidt conducted a hearing, and on August 16, 2018 issued Order No. 18-UI-115082, affirming the Department's decision. On August 27, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he suggested that the ALJ's decision in Order No. 18-UI-115082 finding he was disqualified from benefits was the result of him "not knowing how to disprove what they [the employer's witnesses] were saying as some of the statements they provided were not correct and they brought up circumstances that were not correct but I was not able to object to any of these." However, the ALJ gave claimant an opportunity to cross-examine both of the employer's witnesses after they had testified and did not limit claimant's inquiry. Transcript at 11, 39. In addition, claimant testified at length during the hearing after the employer's main witness had testified, was invited by the ALJ to offer any additional information that he did not provide in response to the ALJ's questions and, after the testimony of the employer's second witness and at the conclusion of the hearing, was asked if he wanted to supply any final information, all of which he declined to do. Transcript at 33, 39-40. EAB has reviewed the hearing record in its entirety and it shows that the ALJ inquired fully into the matters at issue, gave all parties reasonable opportunity to inquire into those same matters on their own behalf and gave all parties as a reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). Claimant's objections to the Order and to the hearing are not well founded.

FINDINGS OF FACT: (1) Applebee's Neighborhood Grill Bar employed claimant from August 13, 2014 until May 24, 2018, last as an associate or assistant manager at the restaurant in Roseburg, Oregon.

(2) Sometime before approximately December 2017, the employer promoted an assistant manager to the position of general manager in the restaurant where claimant worked. Claimant had desired that promotion and was disappointed by being passed over.

(3) Claimant had a difficult time communicating with the new general manager. Claimant perceived that the new general manager thought claimant was trying to override the general manager's authority. The working relationship between claimant and the general manager was poor.

(4) In early December 2017, claimant reviewed a security video and observed the general manager banging a ladder against the wall in the walk-in refrigerator and throwing a plate against a wall. Claimant reported what he had seen on the video to the area manager. On December 23, 2017, claimant observed the general manager lying on the floor in the restaurant. The general manager was drunk and had passed out. Claimant also reported the second incident to the area manager. Aside from the incident in early December 2017, claimant did not observe or hear any reports that the general manager had engaged in other physical outbursts or arguably violent behaviors.

(5) Between December 23 and early February 2018, claimant's communications and relationship with the general manager did not improve. Claimant believed the general manager knew that claimant had reported his behavior to the area manager, and that the general manager was likely to retaliate against him as a result. Beginning on February 10, 2018, the general manager was away from work on a leave of absence to allow him to enter a treatment program.

(6) Shortly after the general manager left on leave, claimant assumed some of his managerial duties. Claimant also implemented some process changes that he thought would improve the restaurant's operations and bring it into compliance with the employer's standards during the general manager's absence.

(7) On approximately March 5, 2018, the general manager returned from leave and resumed managerial duties. The general manager revoked the process changes claimant had put into place in his absence and began performing many of the managerial duties that claimant had assumed. Claimant resented being displaced by the general manager, particularly when claimant would direct employees to take certain steps and the employees would respond that the general manager wanted it done another way. Claimant thought the general manager was "overriding [his] authority" with other employees. Transcript at 24. Claimant disliked that the general manager was exercising authority and revoking or changing what he had done without discussion or consultation with him or the other assistant managers. Claimant continued to dislike what he perceived to be the general manager's lack of communication.

(8) Sometime in approximately April 2018, claimant spoke to the area director about the changes the general manager made after returning to work and his failure to communicate with claimant. The area director told claimant that the general manager was the manager and had the authority to do what he was doing. Exhibit 1 at 5. The area director told claimant that communication went two ways and it was also claimant's responsibility to communicate with the general manager. Transcript at 27. Claimant did not try to speak with the general manager about his concerns because he did not think the communication would be successful, and he thought it was "pointless" to try. Transcript at 27. Claimant felt some stress as a result of the general manager's behavior.

(9) On approximately April 30, 2018, claimant sent the employer a four page letter titled “Life and Times at Roseburg Applebee’s,” which concluded by stating that he was resigning effective May 24, 2018. Exhibit 1 at 2-5. The letter detailed claimant’s dissatisfactions with the general manager and the employer.

(10) On May 24, 2018, claimant voluntarily left work.

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

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) (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.

While claimant may have disliked that the general manager retracted many of the changes that claimant had implemented during the general manager’s leave of absence and that the general manager had resumed control over managerial tasks that claimant had performed during the leave, claimant did not suggest that doing so was not within the scope of the general manager’s authority. Claimant did not describe any circumstances surrounding the general manager’s behavior in this regard that, viewed objectively, would create a grave situation that would cause a reasonable and prudent person to leave work. Claimant did not show good cause for leaving work due to the general manager’s actions with respect to work processes or assignment of managerial responsibilities.

In addition to how the general manager structured work processes and assigned managerial duties after he returned from his leave, claimant cited the general manager’s lack of effective communication and consultation with claimant as another reason that he left work when he did. However, the effects that claimant described from the lack of communication do not amount to a grave reason for claimant to leave work. While claimant generally testified that he felt some “stress” from the lack of communication, he did not describe specific deleterious effects from the stress sufficient to support a finding of gravity. Claimant did not otherwise present sufficient evidence from which it might be discerned that the general manager’s lack of communication or consultation, considered objectively, would have constituted situation of gravity for a reasonable and prudent person in claimant’s circumstances.

Claimant did not meet his burden to show that he had good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-115082 is affirmed.

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

DATE of Service: September 28, 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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