

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0880

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 65611). Claimant filed a timely request for hearing. On August 30, 2018, ALJ Amesbury conducted a hearing, and on August 31, 2018 issued Order No. 18-UI-115878, affirming the Department's decision. On September 10, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record. Claimant did not explain why he did not offer this information during the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Bly Water & Sanitary District employed claimant as the office manager from August 17, 2017 until June 6, 2018.

(2) The employer's staff was small and claimant did not have a supervisor. Claimant believed he had control over the day to day operations of the office subject to policies adopted or supervisory control exercised by the employer's board of directors as a collective body. The employer's board of directors was comprised of at least three board members, one of which was the president.

(3) During his employment, claimant experienced difficulties with at least two board members when they were not acting pursuant to collective action of the board of directors. Those board members would make requests or demands that interfered with claimant's performance of his job duties. One of the board members who made frequent demands of claimant was the president of the board. Claimant disliked the attitude and behavior of the president. On occasion, claimant reported to the board of directors certain behavior of the president that he considered rude or objectionable. Sometimes, only every "once in a while," the president would yell at claimant. Transcript at 43.

(4) In February 2018, claimant, the facility manager and the president were discussing the manager's request for copies of minutes of an executive session of the board of directors. Claimant stated that he did not think he was allowed to provide those minutes to the facility manager, but the president thought otherwise. During the discussion, a female customer entered the office with a complaint about automatic payment of her bill. Claimant tried to deal with the customer, but the president intervened. The customer yelled at the president, and the president yelled at the customer in return. After the president left, the customer remained in the office with claimant and cried. Claimant later reported to the board of directors how the president had acted toward the customer.

(5) Sometime before April 2018, claimant complained to the board of directors that some board members were demanding that he perform certain tasks for them, which increased his workload and interfered with his ability to perform his duties as office manager. By mid-April, the board adopted resolution prohibiting board members from making any requests of claimant other than by submitting to him a completed written work request form.

(6) Sometime before May 2018, claimant complained to the board of directors that the action of a particular board member in routinely entering the work area behind the customer service counter in the office interfered with his ability to perform his work. The board member that was the subject of claimant's complaint was not the president of the board. By mid-May, the board had adopted a resolution that prohibited board members from entering claimant's work area behind the counter.

(7) After mid-May 2018, when the board had adopted its resolutions in response to claimant's complaints, the disruptions that claimant had experienced from actions of board members had significantly lessened and "the [Board's] technique [in adopting the resolutions] was working, you know, for the most part." Transcript at 26. As of June, it had been "a while since something [between claimant and board members] had been really serious." *Id.*

(8) On June 6, 2018, the president visited claimant's office to follow up on some business matters. Claimant was working on a response to a public records request. The president needed to check a date in June 2018 and, when he looked at the calendar on the wall in claimant's work area, noticed that the calendar month on display was still May 2018. The president told claimant he needed to turn the calendar page to June. Claimant told the president that he was busy and that, if the president wanted claimant to turn the calendar page, the president was required to fill out a work request form and submit it to claimant. The president then left the office with the facility manager to discuss other business matters. A very short time later, claimant went outside and continued the discussion with the president. Both claimant and the president became upset and began yelling at each other. Claimant and the president returned to the office. At some point, claimant told the president that he considered the work environment to be hostile based on the president's behavior during the February 2018 incident, and that he could find a better job elsewhere. The president replied that claimant that claimant could quit if he wished. Claimant told the president that he was quitting 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.

According to claimant he had “multiple” encounters with the president in addition to that on June 6, 2018 in which the president yelled and screamed at him. Transcript at 24. However, claimant’s witness, the facility manager who also shared an office with claimant, testified that he had personally observed several interactions between claimant and the president and that he recalled the president raising his voice at claimant only “once in a while,” or twice, including on June 6. Transcript at 42, 43. Notably, neither the facility manager nor claimant described the president as haranguing claimant or engaging in tirades, issuing personal insults or slurs or using foul language in his interactions with claimant. While claimant may have disliked interacting with the president and found him to be unpleasant, the situation as described by claimant was not the type of oppressive or abusive work environment that, viewed objectively, constitutes good cause for leaving work. *See e.g. McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits). Claimant did not meet his burden to show that the behavior of the president on June 6 viewed alone or against the backdrop of other incidents, rose to a grave level that a reasonable and prudent person would have considered it good cause to leave work.

In addition, claimant did not show that he exhausted the reasonable alternatives to quitting that were available to him. Claimant testified that after the board adopted resolutions in April and May 2018 to limit the demands of board members on him, his work situation had improved, the resolutions “did help,” were “working *** for the most part,” and “if something would start, I would say, you know, you have to request it and then the heat would kind of die down.” Transcript at 25, 26. Given the initial progress that was made under the Board’s resolutions in alleviating the circumstances and interactions that claimant considered objectionable, a reasonable and prudent person in claimant’s circumstances would not quit work before giving the employer a further opportunity to address the situation.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-115878 is affirmed.

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

DATE of Service: October 10, 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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