

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0936

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 22, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74828). Claimant filed a timely request for hearing. On September 13, 2018, ALJ Amesbury conducted a hearing, and on September 17, 2018 issued Order No. 18-UI-116650, affirming the Department's decision. On September 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregonian Publication Corp employed claimant as a production worker from March 25, 2017 until June 14, 2018. Claimant usually worked assembling newspapers and placing inserts in them.

(2) Beginning immediately after claimant was hired, he objected to his supervisor's frequent use of foul language in the workplace. The supervisor used foul language in her communications with everyone in the workplace not just claimant. Because everyone heard the language that the supervisor used, claimant assumed management knew of it did not complain to the employer about it.

(3) Sometime before June or July 2017, claimant's supervisor made a gesture toward claimant in which she extended the middle finger of one of her hands. Claimant interpreted the gesture as obscene. The supervisor also made a second gesture with her hand in which she extended her index finger toward her head and mimed that she was firing a "finger gun" at herself. Claimant thought that gesture was made in reaction to something he had done. The supervisor's gestures offended claimant. Around June or July 2017, claimant complained to the employer's general manager about the gesture and told the general manager that the supervisor was picking on him. In response to claimant's complaint, the general manager met with the supervisor and told the supervisor that she needed to behave more professionally in the workplace. The supervisor never again made hand gestures that offended claimant.

(4) Sometime around May 2018, claimant's supervisor told him to stop working on the particular task with which he was occupied and to start working on a different task. Claimant did not want to change from the task he had been performing and hesitated. In reaction, the supervisor stared at claimant and

said to him in front of his coworkers, “You do what I want.” Transcript at 23-24. Claimant thought the supervisor was again picking on him and he was offended that she was doing so in front of his coworkers. Sometime around early June 2018, claimant’s supervisor again redirected him from the task he was working on to another task. Again, claimant thought that the supervisor was singling him out and was offended.

(5) On June 13, 2018, claimant left his work area to visit an employee restroom. There were two restrooms in the workplace and claimant went to the one that he felt most “comfortable” using. Transcript at 9. When claimant returned to the work area, his supervisor told him that he had used the wrong restroom and that he was expected to use the other restroom. Claimant thought the supervisor was harassing him since he believed the two restrooms were approximately the same distance from his work area.

(6) Based on the incident involving the restroom, claimant decided to leave work. On June 14, 2018, claimant left a message for the employer’s office manager stating that he was quitting work. In response, the general manager contacted claimant, asked claimant to reconsider and told claimant that he was willing to arrange a meeting among claimant, the general manager and the director of human resources on June 19, 2018, claimant’s next scheduled workday, to discuss the situation. Claimant declined to do so. On June 14, 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.

At hearing, the employer’s witness, the general manager, and claimant disagreed on when and the number of times that claimant contacted him to complain about the supervisor, what claimant complained about, and the sequence of events culminating in claimant’s decision to leave work. Since claimant is the party for whom benefits are at issue, we have accepted claimant’s account for the purposes of this decision.

Claimant testified that he left work for four reasons: his supervisor’s frequent use of foul language; the hand and finger gestures the supervisor made on one occasion around May 2017; his belief that his supervisor was picking on him when she directed him on a few occasions to change the tasks he was working on; and his supervisor’s comment about the restroom he used on June 13. To show he had good cause for leaving work due to these circumstances, claimant must establish that, as distinct from his subjective experience, an objectively reasonable and prudent person, of normal sensitivities would have concluded that some or all of those reasons gave rise to a grave situation.

With respect to the supervisor's hand gestures they occurred only once, over a year before claimant decided to leave work and they ceased after claimant complained about them. Due to their remoteness in time and because they were never repeated, it does not appear that a reasonable and prudent person would have left work over them when claimant did. With respect to the other behaviors of claimant's supervisor to which claimant objected, while they may have been off-putting to claimant, do not appear to give rise to the type of objectively oppressive and abusive work environments that have previously been found to constitute 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). Although the supervisor may have occasionally used foul language in the workplace, claimant did not show that in a warehouse-type of environment like that of the workplace its use was so pervasive or graphic that would have caused a production worker of normal sensitivities to decide to leave work. While claimant may have thought his supervisor was harassing or picking on him, based on what he described, requesting that he redirect his work on two occasions and indicating to him on one occasion that he was expected to use a different workplace restroom, do not appear to have been other than a supervisor's routine direction to and inquiry of a subordinate employee. Notably, claimant did not contend that the supervisor yelled at him, insulted or called him names, engaged in fits of temper or otherwise behaved in an objectively offensive manner. No aspects of the supervisor's behavior as claimant described them appear to give rise to objectively grave circumstances for a reasonable and prudent person of normal sensitivities.

In addition, claimant testified that he only complained once to the employer about his supervisor's behavior early in his employment and a year before he decided to leave. Transcript at 19. Since the behavior that was the basis for claimant's single complaint was never repeated, claimant should reasonably have pursued a resolution through employer of the issues that caused him to leave work on June 14. Claimant agreed that the general manager tried to have him reconsider his resignation and meet with him and the director of human resources to attempt to rectify the issues claimant had with the supervisor's behavior in lieu of claimant leaving work. Transcript at 43. As such, claimant quit without pursuing this reasonable alternative to leaving work. For this reason, claimant also did not show that he had good cause for leaving work when he did.

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

DECISION: Order No. 18-UI-116650 is affirmed.

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

DATE of Service: October 29, 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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