

Case No.: AO-410803
Claimant: ZIA W MACWILLIAMS

REV

The claimant appealed from the decision of the administrative law judge that held the claimant disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code. The employer's reserve account was relieved of benefit charges.

ISSUE STATEMENT

We adopt the administrative law judge's issue statement.

FINDINGS OF FACT

The claimant established a benefit year claim beginning July 30, 2017. Prior to filing the claim, she was most recently employed by the respondent employer, Downtown Streets Team, as a project manager. The claimant's employment ended on August 1, 2017. The claimant quit her job.

The claimant quit the employment for multiple reasons including; her health, her belief that she was being subjected to discriminatory pay practices by the employer based upon gender, because she had been subjected to sexual harassment, and because she believed that she did not have any opportunity to advance in the company based upon representations of the CEO who reported to her that raises would not be provided to her because she was underperforming the other project managers and because the CEO was generally dismissive of her during a meeting in May.

The claimant was suffering anxiety symptoms which resulted in her being prescribed medication. Her physician on multiple occasions questioned the viability of her continued employment because of the working conditions.

The claimant reported to her immediate supervisor that she was feeling stressed. The claimant was in regular communication with her supervisor about the working environment. The claimant also complained to the person second in command about the way in which she had been treated by the CEO's son. Nothing was done. The complaints did not change the working environment.

The claimant received information that she was being paid less than her counterparts which caused her to believe that she was being subjected to gender

based discrimination. The claimant raised her concerns with the employer which denied that there was gender based pay discrimination.

The claimant was subjected to sexual harassment by the CEO when the claimant was advised that she was interested in a female coworker, but not her. The claimant was also subjected to unwanted and inappropriate sexual banter by the CEO's son at a party attended by the claimant. The claimant did not specifically report the sexual harassment because she did not believe anything would be done because persons responsible for the sexual harassment and creating the hostile work environment were the CEO and the CEO's son; because of the close knit relationship of the management team members, and because of the employer's unwillingness to address other concerns the claimant had expressed.

At the time the claimant orally quit the employment, she reported that she was doing so to return to West Virginia to contemplate a new direction in her life and to address medical issues. Subsequently, the claimant submitted a written resignation.

REASONS FOR DECISION

An individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, section 1256.)

An employer's reserve account may be relieved of charges if the claimant left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, sections 1030 and 1032.)

Although there may be more than one reason to quit, the claimant is entitled to benefits if one reason which constitutes good cause is a substantial motivating factor in the decision to quit. (*Rabago v. California Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200.)

Based upon the evidence received herein, it is found that the claimant voluntarily quit her most recent work for reasons constituting could cause.

Based upon the claimant's sworn testimony, which was provided in a manner which caused the administrative law judge to conclude her testimony credible, it is found that the claimant was subjected to sexual harassment and a hostile work environment.

A reasonable person generally desirous of retaining their employment if confronted with similar circumstances that confronted the claimant would have

elected to quit the employment as a consequence of the sexual harassment and hostile work environment.

There is good cause for voluntarily leaving work where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Precedent Decision P-B-27.)

The claimant's sworn testimony about the issue is accorded greater evidentiary weight and probative value than the sworn testimony of the employer witness which was lacking in conviction and frequently nonresponsive to questions posed to her regarding the issue of sexual harassment.

The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact. (Evidence Code, section 411.)

Although the claimant contended that she was the victim of pay discrimination based on gender, the claimant has failed to produce compelling evidence on that point other than the fact the claimant raised the issue of receiving a proposed raise one month after a male subordinate received his wage increase despite both pay increase requests being submitted to the employer on the same date.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evidence Code, section 115.)

Preponderance of the evidence simply requires proof that a matter in question is more likely to be true than not true. (Precedent Decision P-T-493.)

The claimant's testimony that she was suffering anxiety which resulted from her employment, which caused her to seek medical intervention, is determined to be compelling evidence that the claimant had a good faith fear that continued employment was injurious to her emotional health and physical well-being. Such also constitutes good cause for electing to quit her most recent work.

A reasonable, good faith and honest fear of harm to one's health or safety from the work environment constitutes good cause for quitting. (*Rabago v. California Unemployment Insurance Appeals Board* (1978) 84 Cal.App.3d 200.)

An individual who quits without attempting to resolve the work-related dissatisfactions which prompted the leaving is disqualified for benefits. This rule does not require that all possible remedies be exhausted. It is sufficient that the claimant made a reasonable effort to resolve his or her dissatisfactions. (Precedent Decision P-B-457.)

Although there may be more than one reason to quit, the claimant is entitled to benefits if one reason which constitutes good cause is a substantial motivating factor in the decision to quit. The claimant's stress constituted good cause to quit. On a regular basis, the claimant complained to her supervisor about the working environment and the stress she was suffering. A claimant is not required to exhaust every remedy to satisfy the requirement that a claimant make efforts to preserve her employment.

Section 1256.5 (formerly section 1256.7) of the Unemployment Insurance Code provides that sexual harassment is good cause for leaving employment if a reasonable effort is made to preserve the employment relationship in cases in which such effort would not be futile. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, and any other verbal, visual or physical conduct of a sexual nature when any of the following occur:

- (1) Submission to the conduct is either explicitly or implicitly made a condition of the employment.
- (2) Submission to or rejection of the conduct is used as the basis for employment decisions affecting the individual.
- (3) The conduct has the purpose or effect of interfering unreasonably with the individual's job performance or creating an intimidating, hostile or offensive working environment.

In this case, because the persons engaging in the conduct were the CEO and the CEO's son, complaining about their conduct would have been futile, this is so especially given the fact that when the claimant had complained about the other working conditions, including the pay disparity, and her issues were not adequately addressed. The claimant had also specifically complained to the person second in command about the treatment she was subjected to by the CEO's son and nothing was done. Thus, the claimant was reasonable in her belief that complaining about the highest level of management would not have resulted in a change in the working environment or preserved the employment.

The claimant left her most recent employment voluntarily with good cause and is not disqualified for benefits under code section 1256. The employer's reserve account is subject to benefit charges under code sections 1030 and 1032.

DECISION

The decision of the administrative law judge is reversed. The claimant is not disqualified for benefits under code section 1256. Benefits are payable provided

the claimant is otherwise eligible. The employer's reserve account is subject to charges.