

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0010

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 16, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #104604). Claimant filed a timely request for hearing. On December 10, 2013, ALJ Sime conducted a hearing, and on December 27, 2013 issued Hearing Decision 13-UI-07215, affirming the Department's decision. On January 2, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090. We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Klamath Humane Society employed claimant from January 30, 2013 to September 25, 2013 as a kennel worker.

(2) The employer told claimant at hire that claimant would work assisting with dog adoptions. After hire, claimant rarely worked with dogs, and did not assist with dog adoptions. Her duties were primarily to clean the cat litter pans and the cat rooms.

(3) The employer had more space available for dogs than for cats. The employer kept the dogs in larger, roomier areas, but kept the cats in small cages with little room to move around. Claimant knew cats were often euthanized at the shelter, because the number of cats would sometimes drop dramatically in one day. Claimant felt stress and anxiety when she knew animals were being euthanized, and from seeing euthanized animals and cats kept in small cages. Before she began working for the employer, she

did not realize how difficult it would be to see the animals on a daily basis, and she thought she would adjust to seeing animals enclosed.

(4) In July 2013, claimant sought medical care for anxiety because she was having a difficulties working and sleeping. Her doctor diagnosed her as having anxiety, and prescribed an anti-anxiety medication. She met with a doctor again one month later, and the doctor diagnosed claimant as having anxiety and depression. Claimant began to take antidepressants and a sleep aid.

(5) Claimant's prescription medications did not relieve her anxiety and depression. She met with her doctor approximately four more times before September 25, 2013. Claimant's doctor recommended claimant seek other work to help alleviate some of her anxiety and depression, because her work with the employer contributed to both her medical conditions.

(6) Claimant told her employer she was experiencing stress and anxiety from the constant exposure to the enclosed animals, and asked if the employer would allow her to change her job duties, but the employer refused.

(7) Working fewer hours per week did not relieve claimant's anxiety.

(8) Claimant asked the employer to allow her to take a medical leave of absence due to her depression and anxiety. The employer denied her request.

(9) On September 25, 2013, claimant voluntarily left work to try to remedy her anxiety and depression. Her condition improved substantially after she left work.

CONCLUSIONS AND REASONS: We disagree with the Department and the ALJ and conclude 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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had anxiety and depression, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with these impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

In Hearing Decision 13-UI-07215, the ALJ found that claimant did not have good cause to quit because she was aware when she began work that she would be in daily contact with animals in cages and that she was sympathetic towards animals.¹ Thus, the ALJ reasoned, claimant's own deliberate action of accepting a job where she would be working with animals in cages created the grave situation she faced

¹ Hearing Decision 13-UI-07215 at 2.

at work. We disagree. Although the record shows claimant was sympathetic to animals, it does not show claimant was aware before she began working for the employer that she would work with cats caged in confined quarters and the process of animal euthanasia. Claimant's employer told claimant she would work with dogs, which were not confined to the same extent as the cats, and that she would assist with customer pet adoptions. She did not perform those job duties.

In Hearing Decision 13-UI-07215, the ALJ applied the standard of good cause for voluntarily leaving for a reasonable and prudent person with no long-term physical or mental impairments. We disagree with the ALJ's implicit determination that claimant's medical conditions were not long-term impairments. Claimant experienced symptoms of anxiety throughout her employment, and her anxiety and depression were severe enough that her doctor recommended she find other work because her work contributed to her anxiety and depression. Her attempt to treat her conditions with medication was unsuccessful, as were her requests to change her job duties and for a leave of absence. Continuing to work for the employer was no longer a reasonable alternative for claimant. No reasonable and prudent person with anxiety and depression in claimant's situation would have continued to work for the employer for an additional period of time. Claimant therefore quit work with good cause and is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 13-UI-07215 is set aside, as outlined above.

DATE of Service: January 24, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.