

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0027

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 25, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #171120). Claimant filed a timely request for hearing. On December 18, 2013, ALJ Kirkwood conducted a hearing, and on December 30, 2013 issued Hearing Decision 13-UI-07270, affirming the Department's decision. On January 4, 2013, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant 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 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Nordstrom, Inc. employed claimant from September 28, 2011 to October 3, 2013 as a designer sales specialist.

(2) During the summer of 2013, claimant's manager met with claimant every two weeks to discuss claimant's sales performance because claimant was not meeting the employer's sales expectations.

(2) On July 18, 2013, claimant asked her manager if she could use one week of paid time off in August 2013. Her manager refused claimant's request because her work schedule was already established for August. Claimant's manager approved claimant's request for paid time off from September 12 to September 18, 2013.

(3) During July 2013, claimant began to experience ocular migraine headaches once or twice per week due to work stress. Claimant was diagnosed with having migraines in 2011, but did not seek further medical attention for her migraines when they worsened in July 2013. Claimant had a prescription for medication to treat her migraines, but did not use it.

(4) On August 14, 2013, claimant met with an assistant manager in human resources to complain about how her manager treated her.

(5) On August 15, 2013, claimant's manager gave claimant a written warning regarding failure to work her full scheduled shifts, failure to follow procedures regarding personal clothing purchases, and discussing warnings she had received with coworkers. Claimant disagreed with the issues in the warning, and immediately asked the assistant manager in human resources to speak with her manager immediately.

(6) Claimant was not satisfied with the way in which human resources addressed her complaints. The employer had an "open door" policy permitting employees to present employment complaints to all levels of management. Employees could also make anonymous complaints.

(7) On approximately September 9, 2013, claimant's manager told claimant the employer expected her to meet a specific sales goal by September 15, 2013, or she would receive a warning. Claimant protested because she was going to be on vacation for three days during that time. The manager told claimant she would not give her the warning. On September 19, 2013, the manager gave claimant a warning for failing to meet the employer's sales goal for the first half of September. The warning stated the employer would discharge claimant if she did not meet the employer's sales goal by September 30, 2013. Claimant gave the manager two weeks' notice that she would end her employment on October 3, 2013.

(8) From September 19, 2013 to October 3, 2013, claimant exceeded the sales goals imposed on her by her manager.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude claimant voluntarily left work without 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 migraine headaches, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

To the extent claimant quit work to avoid being discharged by the employer, claimant did not show she faced a grave situation such that she had no reasonable alternative but to quit when she did. The record shows claimant could avoid discharge if she were to increase her sales, which she did. Nor does the record show a discharge from this employer would have been detrimental to claimant's chances of obtaining future employment in her field. Therefore, claimant did not establish that she had good cause to quit to avoid a potential discharge.

To the extent claimant quit work because her manager gave her a warning on September 19, 2013 for failing to meet her sales goals, claimant did not show she had no reasonable alternative but to leave work. Claimant testified that she had not intended to quit her job until her manager gave her a warning on September 19, 2013 when she returned to work after her vacation. Transcript at 11. Although claimant was understandably displeased about having received a warning after her manager told her she would not receive a warning, claimant had the option of continuing to work to meet her sales goals, and continuing to address the situation with human resources. Although claimant spoke with one human resources representative in August 2013, and was not satisfied with the results, she had the reasonable option of complaining to another representative, or a higher-level manager.

Claimant also experienced migraines that she attributed to work-related stress. Rather than quitting, claimant had the reasonable alternatives of using her prescription medication to treat her migraines or seeking medical care. She did not receive professional advice to quit her job. Claimant did not inform her employer she had migraines, and had the option of requesting medical leave to address her medical condition. Claimant did not show that these options would have been futile. A reasonable and prudent person having the characteristics and qualities of a person who has migraines, would not have quit work under the circumstances claimant described.

DECISION: Hearing Decision 13-UI-07270 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: February 4, 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.