

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0172

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 with good cause (decision # 94426). The employer filed a timely request for hearing. On December 23, 2013, ALJ Sime conducted a hearing, and on January 6, 2014 issued Hearing Decision 14-UI-07773, reversing the Department's decision. On January 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a detailed written argument in which she extensively repeated her hearing testimony as well as presented new evidence. Claimant contended this recitation of evidence was necessary because she "did not feel she had the opportunity to articulate significant portions of her testimony due to do [sic] considerable interruptions and repetitive questioning [during the hearing]." Written Argument at 1. We have reviewed the hearing record, and it does not show that the ALJ impeded claimant's testimony or prevented claimant from fully stating her account of the events leading to the work separation. Accordingly, claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering all relevant information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we therefore considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Tillamook County Courthouse employed claimant as a grants program manager from December 14, 2011 until September 20, 2013.

(2) On June 30, 2011, claimant resigned the position she then had with the employer as a result of anxiety and panic attacks she experienced at work as well as the symptoms of chest pain and vomiting that she had with those attacks. Claimant's physician concluded at that time "it is not expected that [claimant] will ever be able to resume employment." Transcript at 24.

(3) After June 30, 2011, after claimant had left work, her condition improved. In November 2011, claimant's former supervisor called and asked claimant if she was interested in temporarily working

again for the employer. Claimant thought she was ready to return to work and agreed. On December 14, 2011, the employer hired claimant for the second time. Claimant performed the same duties as before. In August 2012, the employer promoted claimant to a new position, subject to claimant submitting a release from her physician that she was able to work without restrictions. Claimant obtained and submitted the necessary release. Until approximately March 2013, claimant did not experience the anxiety that had caused her to leave work in 2011.

(4) In March 2013, the employer's accounting manager resigned abruptly. At the time she left, the accounting manager's workload was in disarray, and many required tasks were overdue or not correctly completed. Claimant's supervisor asked claimant to assume the accounting manager's tasks until a replacement manager could be hired. Although claimant resisted doing so, she ultimately agreed.

(5) After March 2013, claimant's workload increased significantly as she took over the accounting manager's duties and still needed to complete her own work as the grants program manager. Claimant felt overwhelmed as a result of her new workload and the deadlines imposed on her by the accounting manager's prior failure to complete many tasks on schedule. Claimant started to experience feelings of serious anxiety and, with increasing frequency, to experience chest pains of varying severity. Based on claimant's prior experience before she left employment in 2011, she recognized the chest pains as a symptom of anxiety. Around this time, claimant told her supervisor, she was "having the chest stuff again." Transcript at 7. In April 2013, claimant took 91 hours off from work as leave without pay due to illness. Claimant continued to work and "hoped the symptoms would leave." Transcript at 23.

(6) As of July 2013, claimant continued to experience feelings of serious anxiety. In July 2013, the chest pains claimant had been intermittently experiencing became "unbearable." Transcript at 23. In July 2013, claimant also started vomiting "every morning" before work. Transcript at 8. Claimant began to have full blown panic attacks "at least twice a week" because she could not keep up with her workload. Transcript at 10. During this time, claimant told her supervisor "on a daily basis" she was "having stomach issues." Transcript at 9. Claimant also told her supervisor "many times" that she was experiencing panic attacks due to work. Transcript at 10. As a consequence of claimant's increasingly severe anxiety and its associated symptoms, claimant tried to consult with her physician. On August 1, 2013, claimant was able to arrange for an evaluation by an associate of her regular physician. The physician whom claimant saw diagnosed claimant with "situational anxiety." Transcript at 9. In August 2013, claimant took off from work due to illness 88.18 hours as leave without pay.

(7) Sometime before approximately September 2013, claimant's persistent vomiting abated. However, claimant continued to experience acute feelings of anxiety and panic. Claimant continued to experience chest pains that varied in pain level "depending on the severity of the attack." Transcript at 10. Claimant continued to speak with her supervisor about her anxiety and her symptoms. A short time before September 18, 2013, claimant spoke with her supervisor and told the supervisor that she was "stressed out" and that she was considering resigning but wanted to consult with her physician before making a decision. Transcript at 17. The supervisor was aware that claimant was missing a great deal of work as a result of her anxiety symptoms. Transcript at 17. On September 18, 2013, claimant saw her regular physician for an evaluation. The physician recommended that claimant quit work, and told claimant "based on what you're going through right now you don't have to give a two week notice." Transcript at 12. In his written evaluation, claimant's physician stated, "[Claimant] is a patient under my care who is currently incapable of working due to acute severe anxiety." Exhibit 1 at 2.

(8) On September 20, 2013, claimant quit work based on her physician's recommendation. During the time in September 2013 that she worked, claimant took off 71 hours as leave without pay due to illness.

CONCLUSIONS AND REASONS: 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 experienced acute severe anxiety, 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 an impairment would have continued to work for her employer for an additional period of time.

In Hearing Decision 14-UI-07773, the ALJ concluded that, although "it may have been unpleasant and uncomfortable for claimant to continue work" given the symptoms she experienced, she did not show she had no alternative but to quit work. Hearing Decision 14-UI-07773 at 3. The ALJ first reasoned that claimant did not pursue the reasonable alternative of requesting a leave of absence that "may have allowed her physical symptoms to improve" and she did not show the employer would not have allowed her to take such a leave without pay. Hearing Decision 14-UI-07773 at 3. The ALJ also reasoned that, regardless of the stress and anxiety that claimant experienced in the workplace, she failed to prove she could not reasonably have continued working until she secured employment elsewhere. Hearing Decision 14-UI-07773 at 3. We disagree.

The ALJ's analysis ignore the advice of claimant's physician that she quit, and also ignores claimant's unsuccessful efforts to ease her symptoms by taking intermittent days off. The ALJ also avoided the issue that claimant raised, that taking time away from work would have exacerbated her anxiety when she returned to work after a leave because "what I had left would still be there waiting for me." Transcript at 15. Given the severity of claimant's symptoms, it is likely that any leave she took would have needed to be lengthy to significantly abate those symptoms when she returned to work. Furthermore, there was no evidence in the record suggesting that such a leave, if allowed, would have been paid, and it is highly unlikely that it would have been paid given the amount of time claimant had already taken off from work as leave without pay. EAB has consistently held that taking a protracted, unpaid leave of absence is not a "reasonable alternative" to leaving work. *See Sharon A. Faist* (Employment Appeals Board, 13-AB-0056, February 25, 2013) (taking a continuous uninterrupted leave of absence was not a reasonable alternative to leaving when any leave would likely be unpaid, claimant had already been on an intermittent leave of up to three days off per month and, in view of claimant's condition, the duration of any leave was uncertain but it would likely be protracted); *Timothy J. Allen* (Employment Appeals Board, 11-AB-7766, July 14, 2011) (extending claimant's leave past two months was not a reasonable alternative to leaving work where the leave would be unpaid, protracted, and claimant's symptoms had not successfully abated); *Vickie L. Bryant* (Employment Appeals Board, 11-AB-1085, April 21, 2011) (extending claimant's leave of absence past two months was not a reasonable

alternative to leaving work when claimant's symptoms had not improved while she was off work, and the leave would likely be without pay and for a protracted period); *Belinda D. Jackson* (Employment Appeals Board, 07-AB-1783, October 24, 2007) (a protracted unpaid leave of absence was not a reasonable alternative to leaving work when claimant was unable to tolerate the work environment). On the facts in this case and given EAB precedent, no reasonable and prudent employee would have considered a leave of absence a reasonable alternative to quitting.

In view of the gravity of the symptoms claimant experienced while she was trying to continue working, and the medical opinion of claimant's physician that she was "incapable of working" at the time she quit, we disagree with the ALJ's conclusion that continuing to work for the employer until she secured work elsewhere was a reasonable alternative for claimant. No reasonable and prudent employee with anxiety, who continued to experience frequent panic attacks accompanied by chest pain and whose physician had advised her to quit work, would have remained at work until she secured other employment. A reasonable and prudent person with anxiety, who experienced the symptoms that claimant described would have reasonably concluded she needed to leave the workplace permanently.

Claimant established that she voluntarily left work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-07773 is set aside, as outlined above.

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

DATE of Service: March 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>.

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