

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0240

*Reversed  
Disqualification*

**PROCEDURAL HISTORY:** On November 25, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #80305). Claimant filed a timely request for hearing. On January 31, 2014, ALJ Wipperman conducted a hearing, and on February 5, 2014 issued Hearing Decision 14-UI-09900, concluding claimant voluntarily left work with good cause. On February 7, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Clackamas County employed claimant from January 24, 2011 to October 10, 2013 as a financial analyst.

(2) Claimant was diagnosed with depression in 2002 and with high blood pressure and diabetes in 2011.

(3) In January 2013, the employer hired a new comptroller. Claimant and the comptroller worked together as part of the employer's fiscal services team.

(4) In February 2013, the comptroller removed some work assignments from claimant, and reassigned them to herself. Claimant disagreed with the comptroller's understanding of her responsibilities and requested a "role clarification" meeting with the director, the comptroller, and herself to discuss what duties belonged to her and to the comptroller. During the meeting, the director clarified who was responsible for each of the duties.

(5) For several months, claimant complained to her supervisor, the chief financial officer, about the poor communication between claimant and the comptroller. Claimant was dissatisfied when the comptroller emailed coworkers about possible errors in claimant's work without first asking claimant about the items, and when the comptroller did not inform claimant of new budget information. The comptroller

did not always allow claimant to present or explain her point of view during meetings, and claimant perceived the comptroller's manner of speaking to her as condescending.

(6) In August 2013, the comptroller told a coworker that he should not be concerned about funding for his position because he could have claimant's job when claimant had a "nervous breakdown." Transcript at 27. The coworker told claimant about the comment, and claimant reported it to her supervisor. The comptroller denied having made the comment, and the supervisor did not investigate the matter further.

(7) Claimant experienced increased stress and anxiety due to the conflict with the comptroller. She began to have thoughts about suicide. Claimant received counseling through the employer's assistance program, and medication management through her physician. Her doctor prescribed her anxiety medication.

(8) Claimant understood she was eligible for a medical leave of absence, but did not request a leave of absence.

(9) On July 31, 2013, claimant's supervisor held a meeting between claimant and the comptroller to discuss their concerns about their working relationship. Claimant presented her concerns, but believed the meeting did not resolve them.

(10) On August 27, 2013, the employer directed claimant to begin reporting directly to the comptroller.

(11) On September 10, 2013, the comptroller asked claimant to update a file. Claimant told her she would do the assignment, but that she had other deadlines that day, and asked the comptroller to discuss the assignment deadlines with her. The comptroller rolled her eyes, muttered something, and walked away. Claimant decided the relationship between her and the comptroller would not improve, so she gave the employer thirty days' notice that she would resign on October 10, 2013.

(12) The employer provides mediation services, and the employer's human resources department provides conflict resolution services. Claimant knew she could contact human resources with her complaints, but chose not to do so until she tendered her resignation on September 10, 2013. The human resources representative told claimant she could rescind her resignation within thirty days pursuant to the collective bargaining agreement. Claimant told human resources she did not want to pursue options other than resigning.

(13) Claimant voluntarily left work on October 10, 2013 due to stress from an ongoing conflict with a coworker.

**CONCLUSIONS AND REASONS:** We 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 depression, anxiety, high blood pressure, and diabetes, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those 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 her employer for an additional period of time.

In Hearing Decision 14-UI-09900, the ALJ concluded that claimant quit work for good cause, reasoning that claimant faced a grave situation when she began having suicidal thoughts after the comptroller became her supervisor, and that the alternatives available to claimant were not reasonable in claimant’s situation.<sup>1</sup> The ALJ reasoned that claimant had made “multiple efforts” to resolve the conflict directly with the comptroller, and through her supervisors, but that those attempts had failed.<sup>2</sup> We agree that claimant attempted to resolve her conflict with the comptroller through her immediate supervisors. However, rather than quit work when she did, claimant could have sought conflict resolution services through the employer’s human resources department or senior management. Claimant did not show that the comptroller’s behavior was so egregious that claimant could not have pursued those options rather than quitting when she did. Claimant gave the employer thirty days’ notice of her resignation. It is more probable than not that claimant would have quit work immediately if her situation had been so grave that she had no reasonable alternative but to quit.

It is also undisputed that leave was available to claimant, and that she did not request a leave of absence. Claimant testified she chose not to take a leave of absence because the employer did not offer paid leave, but failed to show that taking unpaid leave was not a reasonable alternative to quitting. Transcript at 41. The ALJ concluded that a temporary leave of absence was not a reasonable alternative because “temporary leave would not appear to resolve the underlying issue” with the comptroller.<sup>3</sup> We disagree that having taken a leave of absence to address her health issues would necessarily have been futile merely because the comptroller’s behavior may not have changed.

In sum, claimant did not show that her situation was so grave that no reasonable and prudent person with the characteristics and qualities of an individual with claimant’s impairments would have continued to work for her employer for an additional period of time.

**DECISION:** Hearing Decision 14-UI-09900 is set aside, as outlined above.

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

**DATE of Service:** March 10, 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

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<sup>1</sup> Hearing Decision 14-UI-09900 at 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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.