

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0393

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 10, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72828). Claimant filed a timely request for hearing. On February 11, 2014, ALJ Messecar conducted a hearing, and on February 21, 2014 issued Hearing Decision 14-UI-10782, reversing the Department's decision. On March 13, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) JP Morgan Chase Bank employed claimant from September 15, 2009 until November 1, 2013. Claimant was an assistant manager for the employer and then, in 2012, transferred to a mortgage officer position.

(2) Claimant experienced significant stress as a mortgage officer and often was not able to meet the employer's performance objectives. Beginning in December 2012, claimant complained to her manager that she was having difficulties viewing the information displayed on her computer monitor. The manager advised claimant to contact technical support for assistance.

(3) On September 15, 2013, claimant's manager placed claimant on a performance improvement plan because claimant was not achieving the employer's productivity expectations. Claimant asked the manager to notify her if he ever intended to give her a warning for poor performance. Shortly after claimant was issued the performance improvement plan, claimant began speaking to her manager about possibly leaving work as a result of the stress she experienced.

(4) In early October 2013, claimant went to her optometrist for an annual evaluation of her eyesight. The optometrist told claimant that the depth perception in and focusing ability of her left eye had decreased beyond a normal range. The optometrist told claimant that the reduction in depth perception

might be attributable to workplace stress and recommended that claimant take steps to reduce that stress. Exhibit 1 at 2. The optometrist did not recommend that claimant leave work. On approximately October 23, 2013, claimant went again to the optometrist. In that visit, the optometrist evaluated that the depth perception in claimant's left eye had further decreased.

(5) After October 23, 2013, claimant mentioned to three managers working for the employer that she had "eye issues" as a result of workplace stress. Transcript at 16. Claimant did not explicitly ask any of them to provide accommodations that would avoid further decreases in her depth perception. *See* Transcript at 16-17. Sometime after October 23, 2013, claimant told her manager that she planned to leave work as a result of difficulties with her vision.

(6) On October 30 or 31, 2013, claimant's manager told claimant that he was going to issue a performance warning to her sometime during the week beginning November 3, 2013. On November 1, 2013, claimant sent her manager an email informing him she was quitting work.

(7) Throughout her employment, claimant had dealings with the employer's human resources department and the employer's employee assistance program. Claimant was aware that the human resources department was available if she thought her manager was not responding to her needs. Claimant did not contact the employer's human resources department about her vision difficulties or to seek a workplace accommodation. Claimant did not complain to the human resources department that her manager was not accommodating her workplace needs.

**CONCLUSIONS AND REASONS:** 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 P3d 722 (2010). Claimant had decreased depth perception in her left eye, which we assume was 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.

In Hearing Decision 14-UI-10782, the ALJ concluded that claimant had shown good cause for leaving work. The ALJ reasoned that the facts claimant presented at hearing established that a "reasonable and prudent person would not continue working a job they knew would cause significant problems with their eyesight to occur." Hearing Decision 14-UI-10782 at 2. We disagree.

Nowhere in the optometrist's evaluation that claimant submitted does the optometrist state that the diminution in claimant's depth perception was permanent or likely to become permanent if she did not immediately reduce her workplace stress. *See* Exhibit 1 at 2. Nowhere in that evaluation does the optometrist state that she recommended to claimant that she needed to leave work immediately to preserve her existing depth perception. *Id.* Although claimant might have told her manager on several

occasions that she had difficulty seeing the images displayed on her computer screen, it is not clear that she ever told him the magnitude of the problem or that the stress of the workplace significantly was significantly impacting her vision. *See* Transcript at 13, 14, 24. While claimant testified she told three employees in management about her "eye issues," it is not clear that claimant asked these managers for any assistance or that these managers worked in claimant's chain of command or were otherwise in a position to effect any changes in claimant's working conditions. *See* Transcript at 15, 16, 17. Nor did claimant alert the employer's human resources department to her vision problems or try to obtain a workplace accommodation when she was aware of the role of that department and had dealt with it in the past when management was not responsive to an employee's particular needs. On this record, a reasonable and prudent employee who had concerns about her vision, but whose optometrist had not recommended that she needed to leave work immediately, would not have concluded she needed to quit before allowing her employer an opportunity to accommodate her vision needs, including clearly telling her manager the perceived gravity of her situation, notifying the appropriate managers who had authority to effectuate changes in her working conditions of her needs and notifying the employer's human resources department of her need for accommodation. Only after a reasonable and prudent person had taken these steps and determined either that none of these employer representatives was able to assist her or that her eyesight was in jeopardy of being permanently impaired by continuing in her job, would that person have left work. Because claimant did not take the actions of a reasonable and prudent employee before leaving work, she did not show good cause for quitting when she did.

Claimant did not meet her burden to establish good cause for her decision to leave work. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-10782 is set aside, as outlined above.

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

**DATE of Service:** April 28, 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.