

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0415

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On December 31, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #91257). Claimant filed a timely request for hearing. On February 26, 2014, ALJ Kirkwood conducted a hearing, and on February 27, 2014 issued Hearing Decision 14-UI-11330, affirming the Department's decision. On March 18, 2014, 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). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) USCC Payroll Corporation employed claimant from December 15, 1997 to December 2, 2013 as an agent distribution sales support specialist.

(2) In approximately 2010, claimant was diagnosed with hypertension. It was controlled by medication.

(3) In June 2013, the employer began using a new computer accounting system.

(4) Claimant had difficulty learning the new system. Claimant was dissatisfied with the amount of training she received from the employer regarding how to use the new system. Claimant complained to her supervisor about the amount of training, and he told her he expected her to understand the system without more training, and that she should learn the new system by using it. Claimant was dissatisfied with the manner and tone in which the supervisor responded when claimant asked questions about the new system.

(5) In October 2013, claimant met with her sales director and complained about how claimant's supervisor spoke to her. The sales director did not address claimant's complaints.

(6) In October 2013, the employer put claimant on a performance improvement plan. Claimant's supervisor told claimant she had to improve her performance before the end of 2013. During November 2013, claimant's performance improved, but she still did not meet the employer's expectations. Claimant's coworkers did not respond to claimant when claimant asked them questions about the computer system. Claimant's supervisor told her he had no confidence in her work or that she would improve.

(7) As a result of the stress claimant felt from work, claimant often felt nausea and a decreased appetite. Claimant's blood pressure was often high, but was not "alarmingly high." Audio Record ~ 29:12. She did not seek medical attention due to changes in her blood pressure.

(8) Claimant knew she could complain to the human resources department about her supervisor and coworkers, but chose not to do so.

(9) On December 2, 2013, claimant quit work because she was dissatisfied with how her supervisor and coworkers treated her.

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 hypertension, 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.

Claimant quit work on December 2, 2013 because of the allegedly hostile work environment created by her supervisor and coworkers. Claimant testified that her supervisor and coworkers treated her in a demeaning manner, ignored her, and were impatient and rude when she asked for assistance. Audio Record ~ 9:20 to 10:09, 15:30 to 16:15. Claimant testified her supervisor acted frustrated and said, "I don't know what you are talking about," when claimant asked him questions about the employer's new computer system. Audio Record ~ 9:24 to 9:50. Claimant alleged that, other times, if she asked a question or made a mistake, it was "torn apart" by her supervisor. Audio Record ~ 10:48 to 10:54. She testified further that, if she asked her coworkers questions, they "ignored her" or were "abrupt" in conversations. Audio Record ~ 15:39 to 15:48. Although claimant established that her supervisor and coworkers were rude to her, she did not allege her coworkers yelled at her, used foul language toward her, called her names, or threatened her with physical harm. Claimant failed to establish that the behavior of her supervisor and coworkers was such that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

The record shows claimant tried unsuccessfully to improve her working relationship with her supervisor by complaining to him and to her sales director. However, claimant knew she could complain to the human resources department, but chose not to do so due to “pride” and her belief that she could resolve her concerns on her own. Audio Record ~ 25:30 to 27:04. Claimant did not show that it would have been futile to complain to human resources, and testified at hearing that it might have improved the situation with her supervisor and coworkers had she gotten human resources involved. Audio Record ~ 27:18 to 27:57. Moreover, although claimant was experiencing elevated blood pressure due to work stress, the record does not show that her work environment or medical condition was so severe as to prevent her from continuing to work for an additional period of time, while seeking assistance from human resources.

Claimant failed to show good cause for quitting work. She is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 14-UI-11330 is affirmed.

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

DATE of Service: April 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.