

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0531

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On December 2, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 81615). Claimant filed a timely request for hearing. On January 28, 2014, ALJ Lohr conducted a hearing, and on March 12, 2014 issued Hearing Decision 14-UI-12182, affirming the Department's decision. On March 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asserted that the ALJ erred in excluding the testimony of two of her coworkers. Claimant argued her coworkers would have corroborated her testimony that she was working overtime on a regular basis without being paid for overtime, testified that claimant is a person of normal sensitivity, that she quit work for good cause, and that her job stress was beyond a reasonable level. Claimant further asserted that her witnesses would have rebutted some of the employer's witness' testimony, which she had objected to on the basis that it was hearsay. Finally, claimant argued that the employer's witness was not credible.

We construe claimant's written argument as a request that this matter be remanded for a new hearing in which her coworkers are allowed to testify and the employer's hearsay evidence is excluded. However, OAR 471-040-0025(5) (August 1, 2004) states, in relevant part, that immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the ALJ from entering a decision unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible. *Id.*

The employer did not dispute claimant's testimony that she was working overtime on a regular basis without being paid for overtime. The employer instead asserted that it was not legally required to pay claimant for overtime, and claimant failed to show otherwise. Transcript at 7, 13-15, 28. The ALJ gave claimant a reasonable opportunity to testify regarding the level of her job stress, and the employer again

did not dispute claimant's testimony on that issue. The testimony of claimant's coworkers on those issues therefore would have been unduly repetitious.

Whether claimant is a person of normal sensitivity is not material to whether she quit work with good cause, which requires a showing that *no* reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for claimant's employer for an additional period of time. *See* OAR 471-030-0038(4) (August 3, 2011); *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). The good cause standard is objective, and the subjective opinions of claimant's coworkers that she quit work with good cause therefore are not material to that legal issue. *Id.* The testimony of claimant's witnesses on those issues therefore would have been immaterial.

Finally, claimant failed to specify any portion of the employer's witness' testimony that her coworkers would have rebutted. The employer's witness' testimony was not inadmissible merely because it was based on hearsay, and we find no basis for concluding that he was not a credible witness.

In sum, claimant failed to show that the ALJ erred in excluding her coworkers' testimony or admitting the employer's witness' testimony, and that any such error substantially prejudiced claimant's rights. Claimant's request that this matter be remanded for a new hearing therefore is denied.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-12182 is affirmed.

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

DATE of Service: May 2, 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.