

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0570

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 131700). Claimant filed a timely request for hearing. On April 2, 2014, ALJ W. Lewis conducted a hearing at which the employer did not appear, and on April 3, 2014 issued Hearing Decision 14-UI-14240, affirming the Department's decision. On April 7, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she emphasized that the prospect of "undue harm" caused her to leave work, and presented new information about the physical manifestations of the anxiety she allegedly experienced and why she did not pursue counseling or other mental health treatment to control that anxiety before she quit. Written Argument at 1. At hearing the ALJ asked claimant more than once to describe her anxiety symptoms and claimant responded that, aside from "rapid breathing," the symptoms were "hard to describe" and "I'll have to think about that more." Transcript at 16. At hearing, claimant also conceded that she thought counseling "probably would have helped" her but she did not think about seeking that type of assistance before she quit. Transcript at 37, 38. Aside from contradicting claimant's testimony at hearing, claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering this new information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

The remaining relevant parts of claimant's argument generally asserted that she was subjectively afraid that an erratic employee she supervised would become "violent" in the workplace and that was the reason that she decided to quit work. Written Argument at 1, 2. The correct standard for determining if claimant had good cause to leave work due to fear is not only whether she was subjectively afraid, but whether a reasonable and prudent person, exercising ordinary common sense, would reasonably have experienced a level of fear from which that reasonable person would have concluded that leaving work

was the only reasonable alternative. *See* OAR 471-030-0038(4) (August 3, 2011). At hearing, claimant testified that she "wouldn't necessarily say" that the employee had in the past acted out physically toward his coworkers in the workplace, and further testified that "it was hard to explain" why she subjectively believed that she was in danger from that employee. Transcript at 11, 13, 25. Based on claimant's own testimony, we agree with the ALJ that claimant did not demonstrate objectively reasonable grounds to fear the erratic employee's behavior to such an extent that it constituted a grave reason to leave work. Hearing Decision 14-UI-14240 at 4. We also agree with the ALJ that claimant did not show good cause to leave work based on that behavior. Even if claimant were legitimately concerned about her physical safety, we agree with the ALJ that claimant did not show that a reasonable and prudent person would have left work before seeking assistance from her supervisor and the employer's workforce relations department in handling an upcoming meeting with that employee or before seeking mental health counseling treatment to try to control her anxiety about the employee. Hearing Decision 14-UI-14240 at 4.

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-14240 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson and J. S. Cromwell, *pro tempore*, not participating.

DATE of Service: May 6, 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.