

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0787

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 27, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 133255). The employer filed a timely request for hearing. On April 16, 2014, ALJ Wipperman conducted a hearing, and on April 18, 2014 issued Hearing Decision 14-UI-15529, affirming the Department's decision. On May 8, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) JP Morgan Chase Bank employed claimant, last as an assistant branch manager, from October 10, 2001 to February 6, 2014.

(2) During the last half of 2013, the employer announced that it planned to eliminate claimant's position and transfer her to another position elsewhere when it became available. The uncertainty associated with the planned transfer caused claimant to experience extreme anxiety.

(3) Claimant last worked for the employer on December 18, 2013. She left for lunch that day and experienced such extreme anxiety and stomach discomfort that she could not return to complete her shift. Claimant sought medical attention, and was referred to a mental health counselor. Claimant's symptoms included feeling a lump in her throat that prevented her from swallowing, shakiness, hives, crying, and feeling emotionally drained. Claimant was placed on medical leave, which was later extended, and scheduled to end February 5, 2014.

(4) During claimant's medical leave, she continued to experience racing heart, difficulty breathing, difficulty swallowing, and intense flushing. Claimant could not drive by the workplace any longer, and feared going to the grocery store because she might encounter a coworker.

(5) Also during claimant's medical leave, claimant's coworkers told customers that claimant was on medical leave. Transcript at 18-19. However, four customers contacted claimant to report that one

coworker in particular was telling customers claimant was on medical leave for stress and anxiety; one customer said that the coworker had laughed about claimant's condition as she talked with the customer about it. Transcript at 26. Claimant called the employer's human resources office to report what coworkers were saying about claimant's leave. The human resources office instructed claimant's coworkers to state only that claimant was on a leave of absence, and not specify that it was a medical leave. Thereafter, the coworker who laughed about claimant's condition approached one of claimant's acquaintances in a restaurant and "just started slamming" claimant by stating "what a horrible person [claimant] was" and how she had "left them high and dry." Transcript at 13.

(6) Claimant did not feel she was capable of returning to work because her coworkers had told her customers she was on medical leave, and why she was on medical leave, in addition to the anxiety the employer's transfer plans had caused her. On February 3, 2014, claimant notified the employer that she had resigned from work, effective February 6, 2014.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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 anxiety, 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 left work because, despite having had almost two months off work on medical leave to obtain treatment for the extreme anxiety she felt over the employer's plans to eliminate her position at the branch where she worked and reassign her elsewhere at some indefinite time, she continued to experience severe anxiety attacks including hives, flushing, shaking, and other symptoms, and could no longer drive past her place of work or cope with the thought of encountering her coworkers. Her anxiety was increased when coworkers told customers she was on medical leave, and when one coworker in particular told customers that claimant was on leave for claimant's stress and anxiety, laughed at her and "started slamming" her character to her acquaintances.

Given the circumstances present at the time claimant quit, considered from the perspective of an individual with severe anxiety based, on this record, entirely upon her working conditions, no reasonable and prudent person would consider continuing to work for the employer for an additional period of time. Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 14-UI-15529 is affirmed.

Susan Rossiter and J. S. Cromwell;
Tony Corcoran, not participating.

DATE of Service: June 18, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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