

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0791

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142736). Claimant filed a timely request for hearing. On February 27, 2014, ALJ Hatfield conducted a hearing, at which claimant failed to appear, and on February 28, 2014 issued Hearing Decision 14-UI-11385, dismissing claimant's request for hearing. On March 6, 2014, claimant filed a timely request to reopen the hearing. On April 24, 2014, ALJ Micheletti conducted a hearing, and on May 1, 2014 issued Hearing Decision 14-UI-16641, allowing claimant's reopen request and concluding claimant voluntarily left work without good cause. On May 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of Hearing Decision 14-UI-16641 that allowed claimant's request to reopen. We therefore confined our decision to the issue of claimant's voluntary leaving.

FINDINGS OF FACT: (1) Community Alliance of Lane County employed claimant from September 11, 2013 through September 30, 2013.

(2) Claimant has had bipolar disorder, post-traumatic stress disorder, anxiety and panic disorder for ten to fifteen years. In early 2012, claimant had a breakdown and did not work for approximately one and one-half years. Claimant's position with the employer was the first job she had held since her breakdown, and she did not have a full understanding of the types of duties she could perform without triggering symptoms associated with her health conditions. She informed the employer of her mental health conditions upon hire.

(3) Some of the adverse symptoms claimant experienced as a result of her health conditions included, but were not limited to, obsessive thinking, psychotic thoughts, delusions, overthinking, fear, inability to leave her room, inability to remember dates or events, feeling traumatized, extreme panic and extreme anxiety. After the onset of an attack of post-traumatic stress disorder, claimant's symptoms of panic and

anxiety would last three or four days, during which she was unable to function, communicate well, leave her room, make phone calls or think clearly.

(4) On September 30, 2013, claimant's job duties included attending a nighttime meeting located approximately 15 blocks away, to which she would have to walk. Claimant felt too afraid to do so. She experienced a post-traumatic stress disorder attack including a severe panic attack. Claimant told the office manager that she was too afraid to go to the meeting. The office manager did not offer claimant any suggestions or accommodations, and instead commented that if that was the case claimant might not work out in her position.

(5) Claimant was in the midst of a post-traumatic stress disorder induced panic attack at the time the office manager made that statement. She construed the office manager's comment and failure to offer accommodations to her as "discrimination" based on claimant's mental illness. Exhibit 1. She concluded that the office manager did not "seem to have any understanding of mental illness/disability or how they may affect someone's work." *Id.* Claimant felt as though she was being punished for having mental illness. *Id.* Claimant almost immediately sent an email to the employer titled "Discrimination," resigning her position effective immediately.

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 bipolar disorder, post-traumatic stress disorder, anxiety and panic disorder, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

Claimant quit work when she did based upon her perception that she had been discriminated against because of her mental illnesses. Claimant reached that perception during the midst of a post-traumatic stress disorder panic attack, during which she felt afraid. The ALJ concluded that, although claimant "argued that she was not capable of pursuing reasonable alternatives because her PTSD and bipolar disorder affected her thinking on the date she quit," the content of the emails she sent to the employer resigning "strongly suggest that claimant could communicate in a cogent and coherent manner and that her thinking was not severely affected by her mental health conditions." Hearing Decision 14-UI-16641 at 4. We disagree.

Claimant testified as to her mental state at the time she resigned that she was in the middle of a panic attack and "[a]ll I knew was that I'd been discriminated against, I didn't have any kind of – umm – high functioning level of communication ability at that point." Audio recording at ~16:40. Symptoms claimant described as being associated with her mental health conditions included fear, inability to function or leave her room, obsessive thinking, overthinking, and delusions. While claimant was clearly

capable of typing and sending emails the night she quit her job and the following day, the content of the emails demonstrated that claimant was convinced that she had been discriminated against and failed to show any indication that claimant was capable of engaging with the employer in an interactive process to inform the employer of her concerns, work with the employer to resolve them, or continue to work for the employer while the employer addressed her concerns.

Analyzing claimant's decision to leave work based on what claimant in fact knew or reasonably should have known when she decided to quit, in the context of an individual with mental illnesses that affected her ability to think, communicate and function, and caused her to experience panic and anxiety so severe the symptoms lasted for days, the preponderance of the evidence in this record shows that claimant had no reasonable alternative but to quit work when she did, under the circumstances that affected her at the time. Therefore, claimant is not subject to disqualification from benefits based on her work separation.

DECISION: Hearing Decision 14-UI-16641 is set aside, as outlined above.

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

DATE of Service: June 17, 2014

This decision reverses a hearing decision that denied benefits. Please note that unemployment insurance claims may be affected by multiple issues, so reversal of this hearing decision may or may not result in the release of benefit payments. Any benefits owed may take from several days to two weeks for the Department to process.

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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