

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0808

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #94830). Claimant filed a timely request for hearing. On May 7, 2014, ALJ S. Lee conducted a hearing, and on May 9, 2014 issued Hearing Decision 14-UI-17330, affirming the Department's decision. On May 12, 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) Health Services Group employed claimant from July 8, 2013 to February 28, 2014 as a medical customer services representative.

(2) On January 1, 2014, the employer's customer services center began to experience increased call volume.

(3) On January 8, 2014, claimant understood that her lead gave her a warning for making a mistake when giving a quote for services to a customer. Claimant reviewed the quote with her lead, and the lead determined the quote was accurate. Claimant's manager told her the warning would not be included in her permanent file.

(4) On February 14, 2014, claimant met with her supervisor, manager, and a human resources representative. The manager gave claimant a warning, and put her on a 60-day performance improvement plan because the employer was dissatisfied with how claimant handled several customer

calls. Claimant disagreed with the warning and was dissatisfied with the way the manager treated her during the meeting.

(5) Throughout her employment, claimant felt stress from work. She had difficulty sleeping, and cracked skin on her hands.

(6) On February 15, 2014, a supervisor who worked in claimant's department, but was not claimant's supervisor, commented to claimant, "Oh, Karen, you're here," when she saw claimant. The supervisor then walked into the manager's office and stated, "Why is [claimant] still here?" Transcript at 10. The supervisor closed the office door, and claimant did not hear the rest of the conversation. Later that day, claimant saw the supervisor making comments on claimant's task list on the computer.

(7) The employer allowed customer service representatives to take bathroom breaks, but required them to remain logged into their computers during that time, unless it was a scheduled break or lunch time. Claimant was dissatisfied with the employer's rule that she remain logged in to the computer because it affected her productivity percentage. Claimant's last performance review, on October 8, 2013, showed claimant's productivity percentage met the employer's expectations.

(8) On February 26, 2014, claimant gave the employer notice she would leave work on March 7, 2014. Claimant did not complain to the employer about the supervisor who had made the comments on February 15, or about her stress, before she gave notice that she would quit.

(9) On February 27, 2014, claimant overheard the same supervisor respond to the news that claimant was leaving by stating, "Good [claimant] needs to leave." Transcript at 12. Claimant approached her own supervisor at that time, and told him, "I know a certain supervisor has been harassing me and I'm already leaving so she needs to stop it." Transcript at 12. Claimant's supervisor asked claimant if she was referring to the supervisor claimant had overheard making the comment, and claimant responded that she was.

(10) Claimant then told her lead about the comments the supervisor had made to her, and claimant's lead recommended to claimant that she complain to human resources about the supervisor. Claimant spoke with a human resources representative about the supervisor's behavior.

(11) The employer had an employee assistance program (EAP). The employer told claimant about the EAP during a benefit meeting in October 2013.

(12) Near the end of her shift on February 28, 2014, claimant experienced an anxiety attack, including a rapid heartbeat. Claimant called her husband, who encouraged her to quit to protect her health. Claimant sent her manager an email saying she was ending her employment at the end of her shift that day.

(13) When she was leaving, claimant went to the human resources department and told another representative she was leaving because of work stress due the way the supervisor treated her, and because she disagreed with the February 14, 2014 warning.

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). In addition, ORS 657.176(6) provides:

For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The separation would be for reasons that constitute good cause;
- (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and
- (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving,

then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

On February 26, 2014, claimant notified the employer that she would leave work on March 7, 2014. She subsequently quit work on February 28, 2014. Because claimant quit work eight days prior to her planned quit date of March 7, 2014, we must consider the application of ORS 657.176(6) to claimant’s voluntary leaving.

Claimant failed to establish that her planned quit on March 7, 2014 was for good cause. Claimant planned to quit work on that date because of the employer’s allegedly unhealthy working environment, and the impact it had on claimant’s health. Transcript at 6. Claimant testified that she disagreed with the warning she received on February 14, 2014, and was not permitted to explain her position during the meeting. Transcript at 6, 8. The employer’s manager testified that he gave claimant an opportunity during the warning meeting to explain her position, but had to remind claimant that her job was “on the line” because claimant was interrupting and not receptive to the employer’s comments. Transcript at 32. Although claimant disagreed with the warning, she did not establish that the warning was unfounded, or that the supervisors who were at the meeting treated her in a rude or unprofessional manner. Claimant did show that one supervisor made insulting comments about claimant by expressing her satisfaction that claimant was leaving work. However, claimant did not allege the supervisor yelled at her, used foul language, or called her names. Claimant thus failed to establish that the behavior of that supervisor was

such that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant testified that the employer's requirement that she remain logged into her computer during bathroom breaks contributed to the unhealthy environment by causing her stress because bathroom breaks could affect her productivity statistics. Transcript at 12. The record does not show that the rule was unreasonable or that claimant was unable to take necessary bathroom breaks without maintaining productivity levels acceptable to the employer. Nor did claimant assert that she had a medical issue requiring additional bathroom breaks. Claimant thus failed to establish that having to remain logged into the computer during bathroom breaks created a situation of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

The record shows claimant complained to her supervisor and to human resources about her stress, stress-related symptoms, and the supervisor's comments. However, she complained to the employer on the day before she left work, after she gave notice she would quit, and again as she was leaving work. Claimant thus chose to leave work instead of allowing the employer an opportunity to address her concerns. Claimant did not show that it would have been futile to continue working for an additional period of time and wait to see if her supervisor or human resources were able to address her concerns.

Because claimant failed to show she had good cause to quit on March 7, 2014, ORS 657.176(6) does not apply to claimant's work separation. Nor did claimant show she had good cause for quitting work on February 28, 2014. Claimant notified the employer that she was quitting work that day, rather than on March 7, because she had an anxiety attack at work. Claimant experienced trouble sleeping and anxiety due to the pressure of her work environment. The record does not establish that claimant's hand problem was stress-related. However, claimant failed to show that her medical symptoms were so severe as to prevent her from continuing to work for an additional period of time, and, if necessary, seek assistance from human resources or through the employer's EAP. Claimant quit work without good cause and is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 14-UI-17330 is affirmed.

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

DATE of Service: June 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.