

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1010

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82103). Claimant filed a timely request for hearing. On May 29, 2014, ALJ S. Lee conducted a hearing, and on June 6, 2014 issued Hearing Decision 14-UI-19120, affirming the Department's decision. On June 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Douglas County employed claimant from June 25, 1989 to April 4, 2014 as a jail clerk at the Douglas County Jail.

(2) In approximately 2012, claimant was diagnosed with anxiety and posttraumatic stress disorder (PTSD). Claimant also suffers from migraines and fibromyalgia.

(3) From February 2013 until August 2013, the other jail clerk who worked with claimant exhibited erratic, often rude, behavior at work allegedly caused by a brain injury. Claimant felt stress from her coworker's behavior and because she had to restrain the coworker. The other jail clerk retired in August 2013.

(4) After the other jail clerk retired, claimant's workload increased until the employer hired a new jail clerk in October 2013.

(5) During February 2014, the employer instructed claimant that the jail clerks were prohibited from enforcing the employer's prohibition of nude photographs in inmates' mail. One of claimant's duties was to review inmates' mail for contraband, so claimant often saw nude photographs of women in inmates' mail. Claimant recognized some of the women when they came to visit inmates. Claimant disagreed with the employer's decision not to enforce the policy, and in March 2014, claimant complained to the employer about its decision. The employer told claimant she could have the other clerk handle the photographs instead of her.

(6) The employer required claimant to train the new jail clerk hired in October 2013, in addition to performing her regular duties. Claimant felt stress from the additional duty of training the new clerk. Claimant completed the new clerk's training by approximately March 21, 2014.

(7) Claimant sought medical treatment and advice regarding her work stress. Her medical provider recommended she make lifestyle changes.

(8) On approximately March 21, 2014, claimant notified the employer that she would leave work on April 4, 2014. Claimant quit work on April 4, 2014 due to the effects of work stress on her health.

CONCLUSIONS AND REASONS: We agree with 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). Claimant had PTSD, migraines and fibromyalgia, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). Exhibit 2. 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 impairments would have continued to work for her employer for an additional period of time.

Claimant left work due to the impact stress from her working conditions had on her health. Despite claimant's medical problems, the record does not show that claimant's work-related stress created a situation of such gravity that claimant had no alternative but to leave work when she did. Claimant had an inherently stressful job, but had performed her work successfully since 1989. Her counselor noted that claimant had "responded well" to the initial treatment she received for PTSD and "showed significant adaptability in remaining productive" at work during her career. Exhibit 2. Claimant identified several factors at hearing that caused her to feel increased stress during the year preceding her work separation. From February 2013 until August 2013, her coworker's erratic behavior caused claimant additional stress. However, that employee retired in August 2013. Claimant had additional stress from an increased workload until the employer hired a new jail clerk in October 2013, and from having to train the new jail clerk. However, the employer hired a new clerk, and claimant completed the new clerk's training in March 2014. The remaining factor that claimant identified at hearing that caused her increased stress was the employer's decision to allow inmates to receive nude photographs. After claimant complained about the employer's new practice of allowing the photographs, the employer told claimant she could have the other clerk handle the photographs. Thus, the factors that caused claimant's additional stress had been resolved before claimant gave notice to quit work. Moreover, although claimant's counselor told her to make "lifestyle changes" to decrease her stress, the record does not show that claimant received medical advice to quit her job.

In sum, claimant did not show that her situation was so grave that no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairments would have continued to work for her employer for an additional period of time.

DECISION: Hearing Decision 14-UI-19120 is affirmed.

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

DATE of Service: July 16, 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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