

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1025

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141542). Claimant filed a timely request for hearing. On May 27, 2014, ALJ Micheletti conducted a hearing, and on May 28, 2014 issued Hearing Decision 14-UI-18506, affirming the Department's decision. On June 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Comcast Cable Holding LLC employed claimant from October 2, 2006 to April 2, 2014 as a dispatcher.

(2) Claimant had experienced depression and anxiety that caused panic attacks for more than a year.

(3) In March 2014, claimant reported problems with a coworker's work performance to her supervisor. Claimant's supervisor stated she would discuss the matter with the coworker. Several days later, claimant spoke to her supervisor's superior about the same problem with the coworker. Claimant told her supervisor that she had spoken with the supervisor's superior, and that she did not intend to "go over her head." Exhibit 1. The supervisor stated that it was not a problem.

- (4) On approximately March 25, 2014, the employer gave claimant a warning because she had allegedly been rude to one of the employer's employees in a cable store. Claimant felt stress and anxiety as a result of the warning. Claimant complained about the warning to human resources.
- (5) The employer approved claimant's request for a leave of absence under the Family Medical Leave Act (FMLA) due to "exhaustion due to family stress," and work-related stress. Exhibit 1. Claimant was placed off work from March 26, 2014 to April 2, 2014.
- (6) The employer's leave of absence policy required employees to provide a doctor's release before returning to work at the end of a medical leave of absence.
- (7) Claimant took a medical leave of absence from work from March 26 to April 2, 2014.
- (8) On April 1, 2014, claimant called her supervisor and discussed her return to work. The supervisor did not tell claimant the employer needed a release to work from claimant's doctor.
- (9) On April 2, 2014, claimant's supervisor learned that claimant had not yet provided a release to work from her doctor. The supervisor called claimant and told her she needed to provide the form before she could return to work.
- (10) Claimant's medical provider told her it could not provide the release unless claimant made an appointment for April 3, or until claimant's next scheduled appointment on April 4, 2014.
- (11) On April 2, 2014, claimant voluntarily quit work to avoid being discharged.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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 P3d 722 (2010). Claimant had anxiety and depression, 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 because her supervisor did not tell her the employer needed a doctor's letter releasing her to work until the day before her scheduled return to work. Claimant believed that the employer would discharge her if she was unable to return to work on her scheduled return to work day, and that her supervisor intentionally failed to tell her the employer needed the doctor's release in retaliation for having "gone over the head" of the supervisor to complain about a coworker. Exhibit 1.

The record shows claimant did not ask the employer for additional time to obtain the doctor's release before she quit, or show that it would have been futile to do so. The employer's human resources representative testified that it could have given claimant additional time to obtain the letter without being disciplined by the employer. Transcript at 35. Claimant complained to a supervisor in the human resources department about having to provide the doctor's release, but not until after she quit. Moreover, the record does not show a discharge from this employer would have been detrimental to claimant's chances of obtaining future employment in her field.

Claimant believed the supervisor intentionally failed to tell claimant that the employer needed the form. Transcript at 6. The supervisor testified that she did not tell claimant about the doctor's release until the day before her return to work because she had not spoken to human resources about claimant's return to work until that time. Transcript at 43. After the supervisor spoke with human resources, she called claimant and told her the employer needed the release. Transcript at 43. The employer's leave of absence policy required all employees to provide a doctor's release before returning to work from a medical leave of absence. The preponderance of evidence fails to support claimant's assertion that the supervisor intentionally failed to tell claimant the employer required the release in retaliation for having complained to the supervisor's superior. Absent a showing of retaliation, we do not find the employer's failure to tell claimant on April 2 that it needed the doctor's release a reason of such gravity that no reasonable and prudent person with the characteristics and qualities of an individual with depression and anxiety would have continued to work for her employer for an additional period of time.

In sum, claimant did not establish that she had good cause to quit due to retaliation or to avoid a potential discharge. Claimant therefore failed to establish that she quit work with good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-18506 is affirmed.

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

DATE of Service: July 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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