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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1026

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On February 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 71357). Claimant filed a timely request for hearing. On April 10, 2014, the Office of Administrative Hearings (OAH) issued a notice for a hearing scheduled for April 17, 2014. Prior to the hearing, claimant's attorney requested a postponement, which OAH denied.

On April 17, 2014, ALJ Lee convened a hearing at which claimant appeared without counsel, and the employer did not appear. Claimant again requested a postponement, which the ALJ denied. Claimant then declined to participate without counsel and the ALJ adjourned the hearing. On April 18, 2014, ALJ Lee issued Hearing Decision 14-UI-15598 in which she affirmed the administrative decision. On April 23, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On May 16, 2014, EAB issued Decision 2014-EAB-0670, reversing Hearing Decision 14-UI-15598 and remanding the matter for a hearing on the merits of claimant's work separation.

On June 3, 2014, ALJ L. Lee conducted a hearing, and on June 11, 2014, issued Hearing Decision 14-UI-19388, concluding that claimant voluntarily left work without good cause. On June 13, 2014, claimant filed an application for review with the EAB.

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) The Department of Veterans Affairs employed claimant from June 1, 1993 until December 27, 2013, last as a customer service representative in the payroll department.

(2) In 2010, claimant was diagnosed with post-traumatic stress disorder (PTSD) and anxiety disorder. In May 2012, a mental health therapist re-diagnosed claimant with attention deficit hyperactivity disorder (ADHD); claimant does not recall the date of her original diagnosis. In August or September 2013, claimant was diagnosed with Type II diabetes. Claimant sought and received treatment for these conditions.

(3) Beginning in approximately 2010, claimant began to experience stress and anxiety as a result of her work environment. Claimant believed that her immediate supervisor, who was appointed to her position in 2012, treated her harshly, unfairly and disrespectfully. Claimant's supervisor was far less knowledgeable and experienced in the work of the department than claimant, and often insisted that claimant immediately answer her questions, even if claimant was working on a project or talking on the telephone. If the supervisor did not like claimant's response, the supervisor would tell claimant that the information was not helpful. At times, claimant's supervisor criticized claimant for not answering phone inquiries. Claimant believed this criticism was unfair, because she not only answered phone calls she received, but also assisted other payroll department employees in responding to calls they received. When claimant complained to her supervisor about the way in which the supervisor asked claimant for assistance, the supervisor told claimant she was not "very professional and helpful." (Transcript at 25). Claimant complained about her immediate supervisor to the chief of the Human Resources division; the chief told claimant that her supervisor was new to her position and that claimant should "give her a break." (Transcript at 39). In spite of claimant's concern about her supervisor, claimant's performance was considered satisfactory, and she was able to complete her assigned work.

(4) From August 12 through September 4, 2013, claimant took leave from her job. On August 21, 2013, submitted an application for leave under the Family Medical Leave Act (FMLA) because of her depression. The application was returned to claimant because it was incomplete. Claimant resubmitted a complete application and on September 3, 2013 was approved for FMLA leave for the period August 27 through September 4, 2013.

(5) When claimant returned from FMLA leave, she believed her situation worsened. Because no one had been assigned to perform her work while she was absent, claimant's work load increased when she returned to work. In addition, her co-workers resented her for taking time off.

(6) In October 2013, claimant's supervisor resigned and a co-worker was appointed as acting supervisor. Claimant believed that the acting supervisor had no tolerance for her medical problems, and gave claimant more difficult work assignments than other employees in the division.

(7) In early December 2013, claimant sought help from the union in dealing with her stressful work situation. Claimant heard nothing from the union, but did not contact the union again before deciding to resign.

(8) On December 15, 2013 claimant submitted her written resignation, effective December 28, 2013. Claimant explained,

I'm leaving for the following reasons – payroll is a hostile environment for me to work in. Won't accommodate my disability (ADHD), which has gotten worse over the last couple of years, because of constant stress from working too much days and hours, sometimes

six-day stretches. Plus given more work than we can handle, plus they would micro manage my work, even though I have been doing this job for over 20 years, and have gone through many system changes. I have not been given the respect I am entitled to. I have been training to [sic] employees and my own supervisors, and then given satisfactory reviews for the last two years. There is something seriously wrong with this.

(Transcript at 77-78.)

(9) Before she quit her job, claimant applied for a different position with the employer but received no response to her application. Claimant never formally requested a transfer to another position with the employer.

(9) The employer has a procedure for reporting harassment in the work place; the procedure offers a method by which an employee can complain about harassment by a supervisor without having to go to the supervisor whose behavior the employee alleges is inappropriate. The employer also has a policy by which an employee can request a reasonable accommodation for a permanent or short term medical condition. Claimant never utilized either of these procedures.

(10) A week after she left her job, claimant filed a complaint about her working conditions with the office of her representative in the U.S. congress. Claimant did not file her complaint until after she resigned because she was afraid the employer would retaliate against her once it learned about the complaint.

CONCLUSION AND REASONS: We agree with the ALJ that 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 ADHD, PTSD, anxiety disorder and type II diabetes, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with these 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 left her job because she believed that her work environment was a hostile one, because she thought her work load excessive, and because she believed the employer refused to accommodate her ADHD and was otherwise intolerant of or insensitive to her medical conditions. In regard to her work environment, claimant asserted that her supervisors were disrespectful to her; insistent on getting immediate help from claimant, even if she was busy with another task; and criticized her on the grounds that claimant was not helpful or professional. In addition, claimant complained that because of her knowledge and experience, she was expected to train her supervisors. The supervisors’ behavior which claimant described may have been upsetting and unpleasant for claimant, but was not so serious as to

create a situation so grave that a reasonable and prudent person with claimant's medical conditions would have no reasonable alternative but to leave work. Claimant also failed to establish that the expectation that she assist her supervisors was unreasonable or oppressive. An employer can reasonably require that an employee help less knowledgeable and experienced coworkers and supervisors. Although claimant disliked providing this help, the requirement that she do so did not affect her work performance, which remained satisfactory, or prevent her from completing assigned work.

In regard to her workload, the only evidence claimant presented concerning this issue was the assertion in her letter of resignation that she sometimes worked "six-day stretches" and deal with a backlog of work upon returning from her leave of absence. This evidence is insufficient to demonstrate that claimant was required to work excessively long hours.

To the extent that claimant quit her job because of her supervisors' intolerance of her medical conditions and refusal to accommodate her ADHD, claimant had reasonable alternatives. Claimant never utilized the employer's process for requesting accommodation for her conditions. Other alternatives were available to claimant, such as requesting a transfer to another position, using the employer's procedure for complaining about on-the-job harassment, and following up on her request for help from the union. Although claimant asked for the union's help a few days before she decided to resign, she gave the union little time to take action and never checked with the union to learn what, if any, assistance it could provide her. Claimant did not take the actions of a reasonable and prudent person with her medical conditions to attempt to correct the problems she believed she faced at work.

Claimant failed to demonstrate by a preponderance of evidence that she faced a situation so grave that a reasonable and prudent person with her medical conditions would have no alternative but to leave her job. Claimant is disqualified from receiving unemployment insurance benefits on the basis of this work separation.

DECISION: Hearing Decision 14-UI-19388 is affirmed.

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

DATE of Service: July 15, 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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