

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1101

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144537). Claimant filed a timely request for hearing. On June 2, 2014, ALJ Micheletti conducted a hearing, and on June 5, 2014 issued Hearing Decision 14-UI-19067, affirming the Department's decision. On June 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant offered into evidence two doctor notes at hearing. The notes were not legible. The ALJ left the record open for claimant to submit legible copies. In Hearing Decision 14-UI-19067, the ALJ stated he did not receive the notes from claimant before issuing the decision. However, claimant submitted a legible copy of one of the doctor notes to the Office of Administrative Hearings (OAH) on June 4, 2014, before the ALJ issued the decision. OAR 471-041-0090(1) (October 29, 2006) provides that EAB may consider information not received into evidence at the hearing if necessary to complete the record. The doctor note is relevant, and its admission into evidence is necessary to complete the record in this case. Accordingly, the doctor note, marked EAB Exhibit 1, is admitted into the record. Any party that objects to the admission of EAB Exhibit 1 into the record must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090. Unless such objection is received and sustained, the exhibit will remain in the record.

The employer and claimant submitted written argument to EAB. Claimant's argument contained other 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. Under ORS 657.275(2) and OAR 471-041-0090, we considered only information received into evidence at the hearing, EAB Exhibit 1, and the parties' written arguments to the extent they were based on the record, when reaching this decision.

FINDINGS OF FACT: (1) InSpec Group LLC employed claimant from July 25, 2012 to March 27, 2014 as a project administrator.

(2) Claimant was diagnosed with bipolar disorder more than twenty years before she began work with the employer.

(3) In October 2013, claimant began to receive medical treatment for depression and anxiety. Her doctor advised her to leave work.

(4) Claimant's supervisor was discharged in October 2013. After that, the employer's executive assistant began to ask claimant questions on a daily basis about procedures and cost codes. Claimant did not know the answers to the questions, but the executive assistant continued to ask claimant the same questions. On one occasion, the executive assistant told claimant she was "not fit [for the employer]." Transcript at 13.

(5) Before claimant's new supervisor was hired in November 2013, claimant had arguments with two coworkers because she disagreed with how they performed their work duties. Claimant experienced work stress when one of the coworkers quit and claimant had to address problems with customers and contractors he had worked with. Claimant disagreed with how the second coworker prepared contracts. Claimant complained about the coworker to her supervisor at that time, and to human resources. Human resources discussed the matter with the coworker.

(6) Before November 2013, one of claimant's coworkers often yelled at claimant and other employees, and called them "stupid." Transcript at 31. Claimant complained to human resources about the coworker's behavior, and claimant's supervisor addressed the situation. Claimant did not complain about the coworker again.

(7) On January 10, 2014, claimant complained to human resources about the executive assistant. The human resources lead asked claimant to complete a form with more detail about her complaint so human resources could investigate.

(8) On January 10, 2014, claimant requested family medical leave due to stress from work, a pending criminal court case, and her father's terminal illness. Human resources requested additional information from claimant about the dates and reasons for requesting leave.

(9) On January 13, 2014, claimant suffered a mental breakdown and was on sick leave until January 26, 2014.

(10) On January 27, 2014, claimant returned to work after her doctor released her to work. Claimant told human resources she did not want to pursue the complaint against the executive assistant or the family medical leave request. Human resources gave claimant the necessary forms to pursue those matters in the future if she chose to do so. Claimant did not complain about her coworkers or request leave again before her employment ended.

(11) On March 24, 2014, claimant felt stress because her supervisor told her that management was discussing claimant's workload, and that he would do his best to give her work to complete until new projects began. Claimant also had a domestic problem resulting in her decision to divorce her husband.

(12) On March 26, 2014, claimant learned that the doctors would stop treating her father's illness, and that he was moved to hospice.

(13) The employer had rented furniture from claimant for use in a corporate apartment. The initial rental period ended on April 30, 2014, and was paid until that date. In March 2014, the employer decided to rent the furniture for an additional rental period, to begin May 1, 2014. Rent was due on that date. Claimant submitted an expense reimbursement form for the new rental period amount to the employer. She wanted to use the rental money to pay her mortgage because she was at risk of losing her house. On March 27, 2014, the employer refused to pay the rent in advance of the due date.

(14) On March 27, 2014, claimant quit work because the employer refused to pay her rent before it was due.

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 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, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). 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 impairment would have continued to work for her employer for an additional period of time.

Claimant testified that she quit work due to the allegedly hostile work environment created by her coworkers and the impact it had on her health. Transcript at 10 to 13. However, claimant also testified at hearing that she would not have quit work when she did had the employer agreed to pay the rent on her furniture in advance. Transcript at 27. To the extent claimant quit work because the employer refused to pay her the rent before it was due, claimant did not show she had good cause to quit. It was reasonable for the employer to wait to pay the rent until it was due. Despite claimant's financial hardships at the time, the record does not show the employer's decision to refuse to pay the rent in advance of the due date created a situation so grave that an individual with bipolar disorder would have had no reasonable alternative but to leave work.

To the extent that claimant quit work due to stress, claimant failed to show she quit work for good cause. Claimant testified that her coworkers spoke in an "abusive" manner and "harassed" her by repeatedly asking her the same questions although she did not know the answers. Transcript at 11 to 12. Although claimant established that there were some behaviors by her coworkers that were rude, she did not

establish that the behavior continued after she complained to the employer in 2013 and January 2014, or that, even before she complained, the behavior was so oppressive that no reasonable and prudent person with the characteristics and qualities of an individual with bipolar disorder would have continued to work for her employer for an additional period of time. It is undisputed that claimant left work abruptly on March 27, 2014, and did not ask the employer for a leave of absence or other accommodation based on her health issues. The employer had supported her request for leave in January 2014, and the human resources lead told claimant then that family medical leave was an option for her if she needed it in the future. The record does not show the employer was unwilling or unable to allow her a leave of absence or other accommodation to address her health. Absent such a showing, even if claimant's doctor retroactively supported claimant's decision to quit work, the record does not establish that claimant had no reasonable alternative but to do so. *See* EAB Exhibit 1.

We therefore conclude that claimant quit work without good cause, and that she is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-19067 is affirmed.

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

DATE of Service: July 30, 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.