

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1274

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101603). Claimant filed a timely request for hearing. On July 1, 2014, ALJ Hoyer conducted a hearing, and on July 11, 2014 issued Hearing Decision 14-UI-21295, affirming the Department's decision. On July 25, 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 employer 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) Womenspace, Inc. employed claimant from 1999 to May 16, 2014., last as the employer's director of advocacy services.

(2) On July 1, 2013, claimant's coworker was hired as the employer's operations director and claimant's direct supervisor.

(3) On approximately October 1, 2013, the operations director met with a staff person claimant was charged with supervising, and told the staff member she needed to decrease the time she kept her baby with her at work. The staff member was upset and told claimant about the discussion. Claimant disagreed with her supervisor's decision to limit the time the baby could be present in the office, and was dissatisfied that her supervisor did not discuss the matter with her before she spoke to the staff person. Claimant met with her supervisor and argued with her about the supervisor's directive regarding the baby. The supervisor yelled at claimant during the argument.

(4) On October 2, 2013, claimant's supervisor reprimanded claimant for allegedly failing to tell the employer that a staff member was giving presentations at a state agency on behalf of the employer in October. Claimant's supervisor instructed claimant to write an email regarding the matter to the agency.

The supervisor sat at claimant's desk and dictated the email to claimant as she typed. Claimant perceived the supervisor's tone of voice and body language as intimidating.

(5) On October 3, 2014, claimant's supervisor reprimanded claimant for allegedly resisting her instructions to send the email to the state agency on October 2. Claimant and the supervisor discussed claimant's attitude at work. Claimant perceived the supervisor's manner of speaking with her as confrontational.

(6) At a staff meeting on October 10, 2013, claimant's supervisor announced a new procedure for interoffice communication. Claimant disagreed with the new procedure and made a "sarcastic remark" to her supervisor. Exhibit 1. After the meeting, claimant's supervisor reprimanded claimant in her office, with the door closed, for making a sarcastic statement and acting in an insubordinate manner during the meeting. The supervisor raised her voice during the conversation, and told claimant her job was at risk if she continued to act in a negative manner at work. Claimant had additional arguments with her supervisor later that day. The supervisor yelled at claimant during those arguments.

(7) On or about October 10, 2013, claimant began to experience anxiety, panic attacks, and bouts of crying at work. Claimant had not experienced anxiety and panic attacks before, and had no prior history of mental health conditions.

(8) At the end of October 2013, claimant complained about her supervisor's management style to the employer's human resources manager. Claimant was dissatisfied with how her supervisor questioned claimant's decisions, reprimanded her, raised her voice toward claimant, spoke with claimant in her office with the door closed, and gave direction to staff claimant was charged with supervising. In early November 2013, the human resources manager mediated a meeting between claimant and her supervisor about claimant's concerns. Claimant and the supervisor agreed to improve their communication.

(9) From October 2013 through the end of her employment, claimant discussed work-related anxiety issues with her counselor, with whom she met approximately every three weeks.

(10) Claimant complained informally about her supervisor to the human resources manager several times during November and December 2013.

(11) On January 3, 2014, claimant's supervisor told claimant she had taken a lot of time off from work from July through December 2013, and asked claimant if she believed she would be able to complete all her assigned work for January 2014. Claimant was offended by the supervisor's question.

(12) On February 21, 2014, claimant was offended when her supervisor asked claimant if she liked her job. Claimant perceived the question as the supervisor threatening to discharge her. Claimant disliked how her supervisor shook her finger at claimant when she spoke to claimant that day.

(13) On February 24, 2014, claimant told her supervisor she was dissatisfied with her manner of speaking to claimant, including when she shook her finger at claimant. Claimant was upset when the supervisor told claimant she had not shaken her finger at claimant.

(14) On February 28, 2014, claimant filed a formal grievance with the employer. The employer required that either the executive director or the human resources manager participate in all one-on-one meetings between claimant and her supervisor, and that they be included in all email communications between them. The employer gave additional supervisory training to claimant and her supervisor. The employer investigated claimant's claims.

(15) On March 10, 2014, the human resources manager told claimant that the employer had investigated her claims, but had concluded there was no evidence claimant's supervisor had harassed or bullied her. The human resources manager told claimant that she or the executive director would continue to be present during claimant's meetings with her supervisor, and to receive copies of their emails. Claimant appealed the decision to the employer's executive director, who agreed with the human resources manager's conclusion. The human resources committee of the employer's board of directors investigated claimant's grievance, and also concluded there was no evidence of harassment or bullying.

(16) On April 14, 2014, claimant discussed her anxiety symptoms with her doctor. Claimant's doctor recommended claimant take three weeks of medical leave. Claimant took family medical leave from April 9, 2014 through May 2, 2014 due to anxiety with panic attacks. Exhibit 1. Claimant's doctor prescribed claimant medication to use when she felt the onset of a panic attack.

(17) On May 5, 2014, claimant returned to work. She had a panic attack at work, and went home for the rest of the day.

(18) On May 6, 2014, claimant returned to work. She used her medication daily, and avoided her supervisor. Her employer was satisfied with her work performance and told her that she could present additional accommodation requests to the employer if she felt she needed them.

(19) On approximately May 6, 2014, claimant asked to have her direct advocacy duties temporarily removed due to her "state of mind." Transcript at 56. The employer requested that claimant provide a doctor's note by May 15, 2014 showing how her request related to her medical condition.

(20) Claimant had no conflicts with her supervisor during the first two weeks of May 2014.

(21) On May 15, 2014, claimant notified the employer that she would quit work on May 29, 2014.

(22) On May 16, 2014, the employer offered claimant the option of leaving work on May 16, 2014. Claimant accepted the offer, and left work on May 16 because of her supervisor's behavior toward her.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause.

The first issue is the nature of the work separation. OAR 471-030-0038(2)(b) (June 29, 2009) provides that if the employee is willing to continue to work for the employer for an additional period of time but is not allowed to do so by the employer, the work separation is a discharge. If the employee could have continued to work for the employer for an additional period of time, the work separation is a quit. OAR 471-030-0038(2)(a).

Claimant notified the employer on May 15, 2014 that she was quitting work, effective May 29, 2014. The employer offered to end claimant's employment on May 16, 2014, and claimant accepted this offer. Claimant had the option to continue working until May 29. The mutual agreement of claimant and the employer to change the effective date of claimant's resignation to May 16, 2016 did not change the nature of the work separation to a discharge. *See accord J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990). Because claimant could have continued to work for the employer for an additional period of time after May 16, 2014, the work separation therefore is a quit.

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" typically is defined 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). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would have no reasonable alternative but to leave work.¹ Both standards are objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Although claimant began to suffer anxiety with panic attacks in October 2013, she had no history of a mental health condition before then, and the record fails to show that her condition continued after she quit work. Thus, assuming, *arguendo*, that claimant's medical condition was a "physical or mental impairment" as defined at 29 CFR §1630.2(h), the record fails to show that it was permanent or long-term. We therefore apply the "good cause" standard for a reasonable and prudent person of normal sensitivity, exercising ordinary common sense. However, even if claimant had shown that she had a permanent or long-term physical impairment as defined at 29 CFR §1630.2(h), our decision would remain the same because, for the reasons discussed below, claimant failed to show that no reasonable and prudent person with such an impairment would have continued to work for her employer for an additional period of time.

Claimant left work because of her supervisor's behavior toward her. Claimant asserted that the supervisor yelled at her, shook her finger at her, and spoke to her in her office with the door shut. Claimant also asserted that her supervisor undermined her authority with the staff claimant supervised, reprimanded her, questioned her decisions, and threatened her job. However, claimant failed to provide show that her situation was of such gravity that she had no reasonable alternative but to quit work.

¹ 29 C.F.R. §1630.2(h) defines "physical or mental impairment" as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Claimant's supervisor had the right to expect claimant to follow her reasonable instructions regarding office procedures and policies, including interoffice communications, staff bringing children to work, and employer communications with other agencies. Based on claimant's testimony and written statements (Exhibit 1), claimant's own insubordinate behavior caused much of the confrontation with her supervisor. Claimant failed to show that much of her supervisor's conduct toward her was unwarranted.

The supervisor's conduct in yelling and shaking her finger at claimant was unprofessional. However, claimant did not allege or show that her supervisor used foul language, called her names, or threatened her physically. Moreover, there was no evidence the employer condoned that conduct. In addition, after claimant filed her grievance, the employer began monitoring the behavior of claimant's supervisor by requiring that the executive director or human resources manager witness claimant's interactions and communications with her supervisor. Claimant also failed to show that her supervisor's alleged mistreatment continued after she filed the grievance and returned from medical leave.

Claimant failed to show that her supervisor's behavior was so oppressive that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant had the reasonable alternative of continuing to work with the aid of conflict resolution from human resources and her director if additional conflicts arose with her supervisor. Moreover, claimant failed to show that her health issues were so severe that she could not continue to work for the employer for an additional period of time, or that additional medical leave would not have improved her health. Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

DECISION: Hearing Decision 14-UI-21295 is affirmed.

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

DATE of Service: August 25, 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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