

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1355

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 27, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90909). Claimant filed a timely request for hearing. On July 22, 2014, ALJ Lohr conducted a hearing at which the employer did not appear, and on July 29, 2014 issued Hearing Decision 14-UI-22433, affirming the Department's decision. On August 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she repeated her hearing testimony as well as presented new information that she did not offer into evidence at the hearing. Claimant did not explain why she did not offer the new information at the hearing or show that factors or circumstances beyond her reasonable control prevented her from doing so as required under OAR 471-041-0090 (October 29, 2006). For this reason, EAB considered only information received into evidence when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Verizon Wireless employed claimant as a retail sales representative from October 15, 2012 until June 6, 2014.

(2) In claimant's position, her compensation was based on commissions from sales that she made and her performance was evaluated based on the extent to which she met or exceeded sales quotas that the employer had established. Claimant experienced significant stress and anxiety from this work environment.

(3) In 2005, claimant experienced severe depression and attempted suicide. In February 2014, claimant's depression recurred and she sought treatment from her primary care physician. Claimant's physician diagnosed claimant as "severely depressed" and placed claimant on a regime of "high dosage" antidepressant medications. Audio at ~8:22. The physician recommended that claimant take a leave of

absence from work. The employer approved a leave for claimant under the Family Medical Leave Act (FMLA) from March 1, 2014 until April 1, 2014.

(4) Sometime between March 1 and April 1, 2014, when she was on leave, claimant experienced what she later learned was a "very severe manic episode." Audio at ~8:22. During that manic episode, claimant began treatment with a psychiatrist, who diagnosed claimant with bipolar disorder and placed her on appropriate medications. The physician attributed the manic episode to claimant's earlier misdiagnosis and treatment with medications for depression. Claimant arranged with the employer to extend her FMLA leave beyond April 1, 2014 and the employer approved. Claimant also filed a claim for short-term disability benefits under an employer-sponsored insurance plan. The psychiatrist who was providing treatment to claimant told claimant that the stress and pressure of her job triggered her symptoms of bipolar disorder. Audio at ~19:18.

(5) After April 1, 2014, claimant's thinking was "fuzzy," either because of the effects of the medicine she was newly taking to treat her bipolar disorder, the effects of ceasing to take strong antidepressant medications she had previously been taking, the severity of the manic episode she had experienced or some combination of these factors. Audio at ~10:28. During this time, claimant was "extremely, extremely sick" and she "never felt so unstable and not myself before in my life." Audio at ~ 34:37.

(6) On Friday, June 6, 2014, claimant received a letter dated June 2, 2014 from the employer's "unplanned leave team" notifying her that her claim for short-term disability benefits from the employer's insurance was denied, and that, as a consequence, claimant's FMLA leave was "closed" as of April 28, 2014. Exhibit 1 at 3. The letter further stated that claimant's absences from work after April 28, 2014 were considered unauthorized and unexcused, and that claimant was expected to report for work on Monday, June 9, 2014 unless claimant had submitted, by June 9, 2014, a "workplace arrangement" form requesting an accommodation and a medical release signed by her treating physician. *Id.* The letter told claimant that if she did not either return to work or submit the accommodation form by June 9, 2014, she was subject to discharge for job abandonment. *Id.*

(7) After claimant received the letter on Friday, June 6, 2014, claimant immediately got in touch with her treating psychiatrist. The psychiatrist refused to release claimant for work on Monday, June 9, 2014 because the psychiatrist thought that the work environment would "trigger" claimant's bipolar symptoms if she returned to it at that time. Audio at ~19:00. Claimant then tried to reach the person from the "unplanned leave team" who had authored the June 2, 2014 letter to discuss her options because her physician would not release her to work and, because a weekend was all that intervened between June 6 and June 9, 2014, she was unable to make the arrangements needed to allow her to submit the workplace arrangement form and the medical release or to request additional leave by June 9, 2014. Audio at ~28:26. Although claimant left a message for the team member, claimant did not hear back from her. Claimant then tried to reach someone in the employer's human resources department to discuss her options. Audio at ~ 23:00, ~24:00. Claimant left messages, and then contacted a coworker to determine if there were alternative phone numbers to reach a human resources representative, but the only contact number the coworker had was the same number claimant had already called unsuccessfully. Audio at ~24:50. At that time, claimant looked for and found a contact number for the human resources department in her new hire paperwork from 2012 and called that number and left a message. Audio at ~24:00. When that call was returned, claimant learned that the number was no longer for the employer's human resources department.

(8) On June 6, 2014, after waiting for return phone calls from the unplanned leave team and the employer's human resources department and not receiving any, claimant called her manager. Claimant asked the manager if the manager could assist her in obtaining an extension of the June 9, 2014 deadline to enable her to obtain the paperwork that the employer wanted. The manager told claimant that there was nothing she could do, and that once matters had reached the unplanned leave team, claimant had to deal with that team or the employer's human resources department. Audio at ~28:00. Having already tried unsuccessfully to reach representatives from these entities, and concluding that, without an extension of the June 9, 2014 deadline from them, there was insufficient time to obtain medical paperwork from her psychiatrist, claimant told her manager that she was quitting work effective immediately. Claimant was concerned that, as matters stood, she would be assigned to work in the same environment that had caused her to manifest symptoms of bipolar disorder.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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 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.

In Hearing Decision 14-UI-22433, the ALJ concluded that claimant left work without good cause. The ALJ reasoned that claimant did not show that she was unable to return to work on June 9, 2014 with or without reasonable accommodation, and did not show that she had made reasonable efforts to discuss her alternatives with the employer before deciding to quit work. Hearing Decision 14-UI-22433 at 4. We disagree.

In her decision, the ALJ overlooked claimant's mental state when claimant decided to quit work, the extremely short timeline between when claimant learned she needed to report for work or submit the additional required documentation, and the unsuccessful efforts that claimant made to try to have the deadline extended before deciding to quit work. There was no reason to doubt claimant's testimony that her psychiatrist was unwilling to release her to work on June 9, 2014 unless it was to a far less stressful job than she had previously occupied. Audio at ~18:45, ~20:27. Nor was there reason to doubt claimant's testimony that, between June 6, 2014, when claimant first became aware of the June 9, 2014 deadline, and June 9, 2014 only a weekend intervened and claimant's psychiatrist was not in her regular office or able to consult the medical records that would enable the psychiatrist to prepare the required workplace arrangement form by June 9, 2014. Audio at ~25:49. From claimant's un rebutted testimony, it appears that she made far more than reasonable efforts to obtain an extension of the June 9, 2014 deadline by contacting her manager and attempting to contact unsuccessfully the unplanned leave team and the employer's human resources department. Given these exigencies, a reasonable and prudent

person with bipolar disorder, whose thinking was "fuzzy" and who "felt so unstable" and "not myself," might reasonably have concluded, after her psychiatrist was unwilling to release her to work at her former position, that she had no alternative but to quit when it appeared that the employer intended to require her return to that position in three days. Audio at ~10:28, ~34:58.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-22433 is set aside, as outlined above.

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

DATE of Service: September 17, 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.