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

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1636

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 22, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153520). Claimant filed a timely request for hearing. On October 2, 2014, ALJ Frank conducted a hearing, and on October 9, 2014 issued Hearing Decision 14-UI-26690, affirming the Department's decision. On October 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she presented new information about the reasons that she left work. 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). Claimant also did not explain why she did not offer the new information into evidence at the hearing or otherwise show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-041-1190(2) (October 29, 2006). Because claimant failed to comply with applicable regulations, EAB only considered information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Cottage Quilts employed claimant from November 4, 2013 until August 2, 2014. Claimant performed a variety of tasks for the employer, including selling fabrics, selling sewing machines and conducting sewing classes for the owners of sewing machines.

(2) Before the employer's owners hired claimant, they were acquainted with claimant through her past activities instructing others about the use of various sewing and embroidering machines. Based on this experience, the owners agreed to pay claimant \$17 per hour for approximately 38 hours per week of work. This pay rate far exceeded that of the employer's other employees because the owners thought that claimant was able to provide training in addition to selling merchandise. After claimant was hired, the owners determined that claimant was unable to adequately perform the duties for which she was hired. On March 1, 2014, the employer reduced claimant's pay to \$10 per hour. Shortly after the pay

reduction, claimant applied for and received unemployment benefits to supplement her income. After claimant began receiving unemployment benefits, she started to look for a new job with an income that approached her previous income. At no time did claimant request any time away from work to enable her to search for work more effectively.

(3) At some point before April 2014, claimant's physician diagnosed claimant with high blood pressure and prescribed medication. In April 2014, claimant experienced a panic attack at work and contacted her physician. As a result of the panic attack, the physician prescribed a new medication to control claimant's high blood pressure. The physician also prescribed the medication Ativan to control claimant's anxiety. The treatment with Ativan was successful and claimant did not experience another panic attack at work. Although claimant thought that her anxiety and subsequent panic attack were caused by her poor interactions with one of the employer's owners, claimant did not tell either of the owners of this belief. Claimant did not tell either owner that she experienced anxiety at work or that she had panic attacks. On May 15, 2014, claimant saw her physician and her physician diagnosed her with anxiety and advised her to seek "alternative employment" to reduce her "employment-related stressors." Audio at ~12:15. The physician did not advise claimant to quit work immediately because of her health. Claimant still did not advise the employer's owners that she had an anxiety condition that affected her in the workplace and did not request a workplace accommodation or time off due to her symptoms.

(4) On approximately July 5, 2014, claimant submitted a written resignation to the employer stating that she was leaving work effective August 2, 2014. Claimant did not state in her resignation the reasons that she was quitting work and never orally told either of the owners why she was doing so. August 2, 2014, was claimant's last day at work and, after that day, she did not return to the workplace. Claimant voluntarily left work on August 2, 2014.

CONCLUSIONS AND REASONS: 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 hypertension and anxiety, 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 set out a variety of reasons that she quit work, including that her pay was reduced on March 1, 2014, that she needed financially to obtain a better paying job, that her work for the employer hindered her from effectively searching for a new job and that her anxiety and one panic attack necessitated that she leave work. However, claimant conceded that "nothing specifically happened" in or around early July 2014 that motivated her to submit her resignation when she did. Audio at ~11:27. Given claimant's disparate reasons, it is difficult to discern a principal reason that she quit work.

With respect to the employer's actions in reducing claimant's compensation, it does not appear that it caused claimant to quit work when she did since the pay reduction occurred five months before the work separation. Although claimant contended that she was principally motivated to leave work by the fact that the unemployment benefits she was receiving that supplemented her income to an acceptable level after the pay reduction were not going to "last forever," she testified at hearing that she did not know when she might exhaust those benefits. Audio at ~10:45. Absent a showing that the termination of those benefits was imminent and that claimant was aware of that imminence when she quit work, it cannot be concluded, more likely than not, that the exhaustion of unemployment benefits at some unknown, uncertain date in the future constituted an objectively grave reason for claimant to leave work.

With respect to claimant's contended need to devote more time to looking for more lucrative work than she was able to do while continuing to work for the employer, OAR 471-030-0038(5)(b)(A) states that it is not good cause for an individual to leave "suitable work to seek other work." Claimant did not provide any evidence that she thought her work for the employer was not "suitable" in terms of the duties that she performed, and she did not provide evidence that a pay rate of \$10 per hour was not a suitable rate for the type of work she was actually performing. *See generally* OAR 471-030-0037 (August 3, 2011). Based on these considerations, claimant did not show that her need to look for new work was grave reason to leave work when she did.

With respect to claimant's contended anxiety and her single panic attack at work, it is significant both that she did not experience any panic attacks after her physician prescribed the medication Ativan approximately four months before she decided to quit and the physician did not recommend that she needed to leave work immediately for health reasons. Although claimant contended that she believed that her poor interactions with one of the employer's owners caused her anxiety, claimant also did not show that any of the owner's behavior was, in and of itself, objectively abusive or created an oppressive work environment or that, because of her diagnosed anxiety, she was particularly susceptible to emotional harm from this unspecified behavior by the owner. Even if claimant thought that the owner's behavior exceeded a level that she could tolerate given her health conditions, a reasonable and prudent person in claimant's position, with anxiety and hypertension, would not have concluded that she needed to quit work before first notifying the employer of her particular susceptibilities and concluding that the employer would not take steps to reduce the stressors to which she was exposed in the workplace or was unwilling to provide workplace accommodations to her. It is not disputed that claimant did not notify the employer of her anxiety and, although claimant contended that she did not think the owner's behavior was going to change if the employer was notified, she presented no evidence to rebut the owner's testimony that the employer would have attempted to accommodate her or that seeking assistance through the employer would reasonably have been futile. Audio recording at ~16:05, ~18:57, ~24:31, ~25:37.

Claimant did not meet her burden to show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-26690 is affirmed.

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

DATE of Service: December 16, 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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