

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1730

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140001). Claimant filed a timely request for hearing. On October 21, 2014, ALJ Shoemake conducted a hearing, and on October 31, 2014 issued Hearing Decision 14-UI-27954, affirming the Department's decision. On November 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but failed to certify that she provided a copy of it to the other parties 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) Regis Corporation employed claimant as a hair stylist in one of its salons from March 29, 2006 until August 26, 2014.

(2) In approximately 2010 or 2011, claimant started to experience panic attacks in the workplace, principally from the stress of the fast-paced work environment. Claimant's physician diagnosed her condition as anxiety and prescribed medication to control it. When claimant experienced a panic attack at work she needed to sit down and was physically unable to perform her job duties. Audio at ~17:12. After 2010, the employer allowed claimant to take time off or to report late for work or leave work early when she experienced anxiety or had a panic attack. In approximately December 2013, claimant's physician recommended that she take a leave of absence from work to adjust new anxiety medication. The employer approved the leave.

(3) At times, claimant's manager did not allow her to take rest or meal breaks during a work day. Claimant's manager sometimes entered in the employer's timekeeping records that employees had taken breaks when they had not. Claimant complained to the manager about these practices, but the manager did not stop them. Although claimant was acquainted with the manager's supervisor, the district leader,

and the district leader was in the workplace one day each week, claimant never discussed with the district leader that she was not receiving breaks or that the manager was dishonestly altering the employer's time records to show that breaks had been taken. Claimant did not inform the district leader because she did not want to create trouble for her manager.

(4) In approximately July 2014, claimant had a routine appointment with her physician. Claimant told the physician that she continued to experience anxiety in the workplace. The physician recommended that claimant "cut back on work." Audio at ~ 20:36. The physician did not advise claimant to quit work. Audio at ~22:20.

(5) On August 26, 2014, when claimant arrived at work, she saw that one of her regular customers was waiting specifically for her to style her hair and that there were other customers in the reception area also waiting for styling services. Although the employer's salon is a walk-in salon and does not take appointments, claimant thought that her regular customer had been there before the other waiting customers. When claimant started to help her regular customer, the manager instructed her to serve the other waiting customers first. Claimant's regular customer became upset at the delay and told claimant she was never going to come back to the salon. As a result, claimant experienced a panic attack. However, claimant attended to one of the other waiting customers, and then started giving a permanent to second customer. After approximately two hours, claimant went to the manager of the salon and told the manager that she was quitting work after completing the permanent. Claimant did not specify the reason. Claimant returned to the customer, finished the permanent and left the workplace and did not return. Claimant voluntarily left work on August 26, 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 experienced anxiety and panic attacks, 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's testimony at hearing suggested that she quit work on August 26, 2014 because of the panic attack that she was experiencing and because her manager had in the past not allowed her to take breaks. Audio at ~5:13, ~11:30, ~15:30, ~17:20, ~30:43. With respect to the panic attack and anxiety that claimant contended she experienced on that day, it does not appear that they approached a disabling level or significantly impaired her capacities since she was able to continue working on customers' hair for two hours afterward and to notify her manager of her intention to quit. Audio at ~7:01, ~9:37, ~9:52, ~17:52, ~18:09. Even if claimant's experience of those symptoms was far greater than her external behavior suggested, her physician had not told her that it was necessary to for her to quit work to manage those symptoms. Audio at ~22:20. Claimant did not dispute that the employer had in the past

accommodated her requests for time off from work due to anxiety and panic. Audio at ~19:49, ~29:28. However, it does not appear that claimant told her manager on August 26, 2014 that she was experiencing a panic attack or request a brief break from work to allow her symptoms to ease. Audio at ~10:26. A reasonable and prudent employee who experienced anxiety and panic attacks of the type suffered by claimant and whose employer had in the past accommodated these conditions would not have considered another panic attack a grave reason to leave work. At a minimum, such a person would not have left her job until she first asked the employer for a short respite from work and determined that the symptoms would not abate.

With respect to claimant's contention that she quit work because her manager did not allow her to take breaks, it appears questionable that she left work for that reason since there was no apparent connection between a failure to receive breaks and the events of August 26, 2014 that precipitated her quitting work. However, assuming the accuracy of claimant's contention, claimant's manager was clearly violating Oregon law. *See* OAR 839-020-0050(2)(a), (6)(a) (January 1, 2014). Nonetheless, claimant did not show that the manager's behavior constituted a grave reason to leave work because claimant did not inform the employer's district leader of the manager's alleged practice and allow her to rectify it on the employer's behalf. It was not unreasonable to expect claimant to have done so since claimant was acquainted with the district leader, knew she was in the workplace at least one day per week, knew she was the manager's supervisor and thought that she would disagree with what the manager was doing if she knew about it. Audio at ~12:43, ~13:37, ~13:55. A reasonable and prudent employee who wanted to remain employed, exercising ordinary common sense, would not have quit work over her manager's allegedly illegal conduct in not providing work breaks until first notifying the district leader, on behalf of the employer, of that illegality and determining that the practice was not going to be promptly stopped. Because claimant did not take the actions of a reasonable and prudent person or demonstrate that taking those actions would have been futile, claimant did not establish that this was a grave reason to leave work.

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

**DECISION:** Hearing Decision 14-UI-27954 is affirmed.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, 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](http://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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