

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1741

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83526). Claimant filed a timely request for hearing. On October 23, 2014, ALJ Shoemake conducted a hearing, and on October 31, 2014 issued Hearing Decision 14-UI-27962, concluding claimant voluntarily left work with good cause. On November 7, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Willamette Education Service District employed claimant from November 14, 2004 until June 28, 2014 as a help desk support provider. Claimant provided customer support to 32 school districts and managed 2,000 substitutes for the employer's school district.

(2) In 2008, the employer discharged three help desk employees and assigned their duties to claimant. In April and May 2012, the employer reclassified and discharged additional employees and assigned their duties to claimant.

(3) In November 2012, claimant filed a complaint against her manager and director alleging they unfairly reclassified claimant's coworkers, mismanaged claimant's department, and gave claimant an unreasonable workload. Claimant's director resigned in lieu of being discharged as a result of the investigation, but the employer made no changes to claimant's working conditions.

(4) Claimant experienced stress due to the demands of her job. Claimant also had arthritis that was aggravated by work stress. In February 2013, claimant sought medical care due to her stress level. Claimant's doctor recommended that claimant quit work. Instead, claimant began medical leave on February 1, 2013.

(5) On May 1, 2013, claimant returned to work and discussed changes with the employer to improve her working conditions. The employer agreed to reduce claimant's work duties by having claimant's manager resolve some of the requests for assistance claimant received each week. The manager did not

assist claimant with the requests, and claimant was again overwhelmed with work, falling three months behind in addressing help desk requests for assistance. Claimant reported to her director and manager each week that she was unable to manager all the requests. The employer refused to authorize claimant to work overtime or compensation time to address the backlog of requests.

(6) Claimant's doctor recommended, and claimant requested, an ergonomic desk and chair at work. The employer did not provide the desk and chair and did not approve the purchase of the chair and desk by claimant's short term disability insurer.

(7) In April 2014, claimant began a second period of medical leave due to work stress.

(8) During medical leave, claimant attended physical therapy. The therapist discontinued claimant's therapy and told claimant the therapy was not working because claimant was not able to manager her work stress. Claimant saw a psychiatrist to learn biofeedback techniques to manage her stress and control her muscle strength. Claimant's psychiatrist told claimant she was unable to use biofeedback to manage her stress because the stress was constant. The psychiatrist recommended claimant quit work. Claimant also saw an arthritis doctor who recommended she not return to work for the employer due to stress and claimant's pain level.

(9) On June 1, 2014, claimant gave the employer notice that she would quit on June 27, 2014. Claimant worked part time until June 28, 2014, when she quit due to work-related stress and arthritis pain.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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 arthritis and stress, which were, for claimant, all permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with such 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 his employer for an additional period of time.

Claimant quit work because her workload caused her to have an unmanageable level of stress that caused claimant pain due to her arthritis. Claimant's stress and arthritis pain could not be controlled by physical therapy or biofeedback while she continued to work for the employer. Medical leave or otherwise taking time off from work was not a reasonable alternative for claimant because her stress and pain returned when she returned to work. Claimant discussed her concerns with her employer and the employer did not make changes to improve her working conditions. Three of claimant's medical providers advised claimant to stop working for the employer. Given the effect of claimant's workload on claimant's mental and physical condition, and her doctors' advice, no reasonable and prudent customer support provider with arthritis and stress would continue working when doing so caused her

unmanageable stress and pain. Based on her doctors' advice, claimant had no reasonable alternative but to leave work when she did.

Claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 14-UI-27962 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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