

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1756

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 145349). The employer filed a timely request for hearing. On October 16, 2014, ALJ Frank conducted a hearing, and on October 22, 2014 issued Hearing Decision 14-UI-27387, affirming the Department's decision. On November 11, 2014, the employer 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 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. EAB considered the entire hearing record when reaching this decision.

FINDINGS OF FACT: (1) Rise, Inc. employed claimant from November 20, 2013 to August 18, 2014 as a direct support person for adult clients with mental disabilities.

(2) On January 21, 2014, one of claimant's clients told a supervisor that he felt that "he couldn't be safe with [claimant] because he was attracted to [claimant]." Audio Record at 21:37 to 21:44. Claimant told the employer during subsequent staff meetings that it would be safer for the client to have a male support person. The employer did not remove the client from claimant's care, and claimant continued to work with him for another month. On February 27, the client told a staff person that he "was going to rape [claimant]." Audio Record at 22:00 to 22:06.

(3) After February 27, 2014, the employer removed claimant from working directly with the client who threatened to rape her. After several weeks, however, the employer allowed the client to receive vocational training in the same building where claimant sometimes worked with her clients. Claimant was dissatisfied with the level of supervision for the client because sometimes there were no supervisors present, and other staff members were occupied with their work. On one occasion, claimant was alone in a room with the client while other staff worked outside the room.

(4) On August 14, 2014, claimant arrived at a duplex where one of her female clients lived. One of the employer's male clients lived in the other half of the duplex. As claimant walked through the garage shared by both clients, the neighboring client entered the garage, yelled at claimant, shoved her, hit her in the face, dragged her to the ground by her hair, and hit her approximately seven times in the head. Claimant's client restrained the other client so claimant could get away from him, and escorted him back to his side of the duplex. Claimant called and told the employer about the incident, and requested medical attention for injuries to her head. It took two hours for another employee to arrive at the duplex to relieve claimant from work. Claimant went to the emergency room and filed a police report. The client who attacked claimant was charged with fourth degree assault.

(5) Claimant discussed the August 14, 2014 incident with the employer's residential manager. The manager told claimant for the first time that the client who assaulted her had been "acting on edge for weeks," that she had been concerned she herself might be assaulted, and that the client had been violent toward staff "at least once a year." Audio Record at 12:35 to 12:46. One of the other staff people attacked by the client was also attacked in the garage in the same manner as claimant. The manager told claimant she would no longer work at that client's residence.

(6) The only physical response to an attack by a client permitted by the employer was a restraining hold. Claimant was dissatisfied with this option because she was sometimes outweighed by a client by 100 pounds.

(7) On August 18, 2014, claimant met with the employer to submit her resignation. Claimant told the supervisor she felt unsafe working at the employer's office when the client who assaulted her was present. The supervisor did not tell claimant she could potentially transfer to another program with different clients. Another supervisor asked claimant if there was anything the employer could do to make the workplace safer. Claimant suggested the employer hire more male staff. The supervisor did not respond except to shrug his shoulders. Claimant voluntarily left work because of the risks that working for the employer posed for her physical safety.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude 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 P3d 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.

Claimant quit her job because she was concerned about her safety at work. Claimant was threatened by one client, and assaulted by another, within a six-month period. Although the employer told claimant she would not have to work directly with the client who threatened to rape her, or at the residence of the client who assaulted her, claimant believed the employer engaged in unsafe work practices that would

result in further harm to her by a client. Audio Record at 11:04 to 11:50. Claimant quit work on August 18, 2014, to avoid potential harm at work.

Claimant established that working for the employer posed a risk to her physical safety such that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working for the employer. Claimant and other staff had been assaulted and threatened with physical harm at work, and the employer did not adequately mitigate the safety risks. Although the employer knew the August 14 client was potentially dangerous, it did not provide reasonable safeguards for claimant, such as warning claimant about the client's recent signs of aggression. Similarly, although the employer knew one client stated that he could not be safe with claimant, the employer allowed claimant to continue working with that client for another month. Although the employer ultimately changed both clients to different support staff, claimant continued to feel unsafe because she had to interact with them at the employer's office where the clients sometimes had inadequate supervision.

Claimant's supervisor testified that she was prepared to call other team leaders "to see if they could use claimant" in their programs with clients who did not have a history of violence. Audio Record at 31:00 to 32:28. However, the record fails to show that the other team leaders had suitable positions available to which claimant could have transferred. Moreover, the employer did not present the option of transfer to claimant. Although the employer asserted that it would have allowed claimant to take a leave of absence from work (Audio Record at 33:22 to 33:36), the record fails to show claimant's working conditions would have improved when she returned. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working for the employer under the circumstances claimant described.

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

DECISION: Hearing Decision 14-UI-27387 is affirmed.

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

DATE of Service: December 19, 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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