

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1769

*Affirmed
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 #153512). Claimant filed a timely request for hearing. On October 30, 2014, ALJ Wiperman conducted a hearing, and on November 7, 2014 issued Hearing Decision 14-UI-28389, affirming the Department's decision. On November 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kinetics Climax, Inc. employed claimant as a manufacturing specialist from February 2, 2009 to August 14, 2014.

(2) From approximately 2007 through the end of her employment, claimant received treatment, including medication, for bipolar disorder. Claimant's medication sometimes caused her difficulty with concentration and memory.

(3) Beginning in 2010, claimant, who was the only African-American person working for the employer, believed her supervisors were discriminating against her based on her race with regard to both job assignments and statements they made to her. Claimant made reports regarding both to the employer's human resources department, including reports that both of her supervisors continually stated to her "I have nothing on you yet." She complained to several human resources representatives but they were never able to substantiate her reports and her supervisors were not disciplined. Transcript at 15. After one supervisor passed away, claimant continued to report that the other supervisor persisted in making the referenced statement but no action was ever taken.

(4) In approximately December 2013, claimant reported that a temporary worker approached her and then rubbed her shoulders in what she believed was a sexual manner that was offensive to her. She filed a sexual harassment claim with the employer but the employer's attorney reviewed video and interviewed the worker and concluded the claim was not substantiated. No action was taken on claimant's complaint and the temporary worker's employment eventually was terminated for other

reasons. Claimant believed the employer's inaction on her claim was another example of discrimination against her.

(5) In approximately February 2014, claimant injured her shoulder at work and filed a worker's compensation claim. While the claim was pending, her orthopedic physician concluded she needed surgery. Following a short period of light duty work which aggravated her shoulder condition, claimant applied for and obtained continual FMLA and OFLA leave for her condition beginning June 18, 2014 and scheduled to end in September 2014.

(6) On August 14, 2014, while on medical leave, claimant received notification from her physician's office that her worker's compensation claim had been denied and that her physician would not be able to perform surgery. That day claimant contacted the employer's human resources director, who had just been hired in June, and reported that she was resigning from work immediately because her worker's compensation claim had been denied and the employer had never addressed her claims of discrimination. The new director suggested she remain on leave while she and the new director pursued her claims of discrimination, either in person or otherwise. Claimant declined that suggestion and told the new director she was resigning immediately. Claimant was not advised by her mental health provider to quit work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for quitting work when he 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 quit work. OAR 471-030-0038(4). Claimant had bipolar disorder and had received treatment for the condition since at least 2007. We assume without deciding that her condition constituted a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). Therefore, we analyzed claimant's decision to leave work using the standard of a reasonable and prudent person with the characteristics and qualities of an individual with such impairment. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person with the characteristics and qualities of a person with her condition would have continued to work for the employer for an additional period of time.

Claimant asserted "the straw that broke the camel's back" and caused her to quit when she did was the notification she received from her surgeon's office on August 14 that her worker's compensation claim had been denied. Transcript at 21-22. Accordingly, that incident was the proximate cause of her decision to quit work and is the proper focus of our voluntary leaving analysis.

Claimant did not show good cause for quitting work when she did for that reason. On this record, claimant had not yet sought legal advice regarding her options for contesting the insurance carrier's claim denial or medical advice from her physician regarding potential medical options besides surgery. Claimant had approximately four additional weeks of protected medical leave within which to seek such

advice without severing the employment relationship. Claimant failed to establish that no reasonable and prudent person with the characteristics and qualities of a person in her condition would have maintained the employment relationship and pursued those basic alternatives.

To the extent claimant voluntarily left work when she did because she was frustrated by the employer's past failures to address her claims of discrimination, she also failed to establish that she did so with good cause. Claimant did not dispute that the new human resources director invited her to pursue her discrimination claims with her while she remained on protected leave and she failed to show that she was medically advised to quit or had other sufficient reason for doing so before pursuing her discrimination claims with the new director. Claimant similarly failed to establish that no reasonable and prudent person with the characteristics and qualities of a person in her condition would have pursued that option with the employer before quitting.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-28389 is affirmed.

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

DATE of Service: December 22, 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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