

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1770

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 75037). Claimant filed a timely request for hearing. On November 6, 2014, ALJ Lohr conducted a hearing, and on November 12, 2014 issued Hearing Decision 14-UI-28533, affirming the Department's decision. On November 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Oregon Department of Transportation employed claimant in its financial service bureau imaging department from March 18, 2013 to September 17, 2014.

(2) Claimant worked in a room with two coworkers who suffered from migraine headaches. The coworkers initially refused to allow claimant to open her window blind or turn on her light, asserting the light gave them headaches. Claimant complained to their manager, who instructed the coworkers in a group meeting to allow claimant to open her blind and turn on her light. One of the coworkers sometimes closed claimant's blind and turned off her light until claimant again complained to their manager, who told the coworker not to touch the blind, and had claimant's light switch taped to the "on" position.

(3) The coworkers also complained to claimant that she was giving them headaches by typing or turning pages too loudly, or answering the phone in a "bubbly" manner. Transcript at 14. Claimant complained to their manager, who told the coworkers in a group meeting that they could not control how claimant worked. However, the coworkers continued to complain to claimant about her behavior.

(4) The coworkers also falsely asserted to their manager that claimant was not performing her share of the work. Their manager confirmed that claimant was performing her share of the work.

(5) Claimant and her coworkers continued to complain to their manager about each other's behavior, and their manager continued to address their complaints in group meetings. In mid-July 2014, their manager offered to move claimant to a desk in another room to limit her interaction with the two coworkers. Claimant accepted the offer. On July 29, 2014, however, claimant took a medical leave of absence for a surgical procedure before her manager moved her to a desk in another room.

(6) On September 15, 2014, claimant was released to return to work for the employer. On September 17, 2014, claimant quit work because of her coworkers' behavior toward her.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of 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" typically is defined 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). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would have no reasonable alternative but to leave work. Both standards are objective.¹ *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 would have continued to work for her employer for an additional period of time.

At hearing, claimant asserted that her coworkers bullied to such an extent that she cried at work almost daily, and was prescribed four medications for anxiety, depression and insomnia. Transcript at 9-11, 17-18. However, the record fails to show the claimant informed her manager or the employer's human resources department of the extent of her coworkers' alleged bullying or its effect on claimant's mental health. At hearing, claimant asserted that doing would have been futile. Transcript at 9-10. However, claimant's manager addressed, or attempted to address, the coworkers' behavior about which claimant did complain, and ultimately offered to move claimant to a desk in another room to limit her interaction with the coworkers. The manager also disputed claimant's assertion that complaining to the human resources department would have been futile,² and we find the evidence on that issue, at best, equally balanced. Thus, absent a showing that claimant communicated the extent of her coworkers' alleged bullying and its effect on her mental health, and that the employer was unwilling or unable to address the situation, claimant failed to establish that she had no reasonable alternative but to quit work.

¹ 29 C.F.R. §1630.2(h) defines "mental impairment" as any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

² Transcript at 25-29.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-28533 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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