

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1921

*Affirmed
No Disqualification*

PROCEDURAL HISTORY: On November 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 151332). The employer filed a timely request for hearing. On November 26, 2014, the Office of Administrative Hearings issued notice of a hearing scheduled for December 10, 2014. On December 10, 2014, ALJ S. Lee conducted a hearing, and on December 12, 2014 issued Hearing Decision 14-UI-30335, affirming the Department's decision. On December 19, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer requested that EAB consider new evidence, including a narrative and other documents such as witness statements from individuals who did not testify at hearing. The employer's request for relief is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of its request, the employer asserted that the employer was unaware of claimant's allegations prior to his resignation and did not complete its internal investigation until after the hearing was over. However, the employer was aware of the issues to be addressed at the hearing when it received the administrative decision, which was issued over a month before the hearing, and the notice of hearing, which was issued two weeks before the hearing. Despite having advance notice of the issues to be considered at the hearing, the employer did not assert or show what, if any, attempt it made to have the witnesses in question participate in the hearing. Nor did it show what, if any, attempt it made to request a postponement or continuance of the hearing until it completed its investigation. The employer's request to have EAB consider the new information is, therefore, denied. EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) West One Automotive Group Inc., dba Hertz Rentals, employed claimant, last as a finance manager, from February 15, 2012 to October 16, 2014.

(2) Claimant had an anxiety disorder and a heart condition, atrial fibrillation; both of these conditions were worsened by stress. Since at least June 2013, claimant had been treated and received medication for these conditions.

(3) Claimant's work environment was extremely stressful for him. He often was asked by supervisors to provide false information to customers and banks to facilitate car sales. Claimant objected to such requests and the sales manager often subjected him to angry ridicule or even assaultive behavior, tolerated by the general manager, and the general manager often berated and belittled claimant, sometimes in front of coworkers. On at least one occasion, the sales manager grabbed claimant by the neck, threatened to punch him and then punched a hole into a display behind claimant. When claimant reported the incident to the general manager, his response was "I didn't see anything." Transcript at 19. The general manager often called claimant "stupid", "an idiot" and "a pussy." Transcript at 15, 18. He also made fun of his obesity and told him he "couldn't get a job anyplace else." *Id.* In January 2014, the employer eliminated the human resources department in the office where claimant worked as a cost-cutting move. Claimant did not report the behavior to managers at the corporate office in Pasco, WA because he was told by the sales manager that if he did, "that would be the last thing that [he] did there." Transcript at 16. After the sales manager left the employer in August 2014, claimant continued to be subjected to belittling comments and pressure to report false income to secure loans by the general manager.

(4) On October 14, 2014, claimant's physician recommended that he quit his job because if he did not he would be at substantial risk for a heart attack. Rather than report the general manager's behavior to the corporate office, which he believed would be futile, and result in retaliation and additional stress, claimant accepted his physician's advice and decided to quit. Exhibit 1; Transcript at 7, 13-14.

(5) On October 16, 2014, claimant notified the general manager he was quitting work, effective immediately.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) proves, by a preponderance of the evidence, that he had good cause for leaving 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 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 been had been diagnosed and treated for an anxiety disorder and heart condition for a year or more prior to the end of his employment and those conditions were permanent or long-term "physical or mental impairment[s]" 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.

In the present case, the employer's only witnesses were members of its corporate office who were not able to dispute claimant's description of his work environment. Absent a basis for concluding that

claimant was not credible, we gave his firsthand testimony under oath great weight, and therefore found facts in accordance with his testimony and documentary evidence.

Claimant's work environment caused him to experience extreme stress and anxiety and worsened his medical conditions. His medical provider eventually concluded that the work environment put claimant at substantial risk for experiencing a heart attack and recommend that he quit his job. Previous requests to the general manager to stop his belittling comments and pressure to falsify information to customers and banks to facilitate car sales were futile. Claimant's receipt of a recommendation from his physician to quit his job or risk a heart attack from the stress he was experiencing at work was the proximate cause of his decision to quit work two days later. In that context, we conclude that a reasonable and prudent person with claimant's anxiety disorder and heart condition, who had been told that reporting management's objectionable behavior to the corporate office would result in retaliation, would have had no reasonable alternative but to follow his doctor's advice and quit work when he did. Viewed objectively and stated another way, no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairments, in his circumstances, would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits based on his work separation.

DECISION: Hearing Decision 14-UI-30335 is affirmed.

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

DATE of Service: February 4, 2015

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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