

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0031

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On November 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140414). Claimant filed a timely request for hearing. On December 26, 2014, ALJ Wyatt conducted a hearing, and on December 31, 2014 issued Hearing Decision 14-UI-31186, affirming the Department's decision. On January 13, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Department of the Interior employed claimant from October 21, 2013 to October 28, 2014 as a supervisory fish biologist.

(2) During the three years preceding claimant's employment, he filed three complaints with the Equal Employment Opportunity Commission (EEOC) alleging the Bureau of Reclamation discriminated against him on the basis of age and gender when it selected a 32-year-old woman with limited experience instead of claimant as division chief, and when his employer gave him low performance ratings. Claimant was 56 years old.

(3) In 2013, a new ten-year plan for claimant's division was issued that would eliminate or reduce claimant's duties.

(4) On March 7, 2014, claimant's supervisor gave him a written warning for using a vacant office, missing a meeting with his supervisor, and failing to use the employer's scheduling system. Claimant perceived the written warning as "petty" and unfounded, and as evidence of ongoing discrimination and retaliation for having filed complaints. Audio Record at 14:25 to 15:18.

(5) On April 16, 2014, claimant filed a fourth complaint alleging that the employer discriminated against him when it negotiated the ten-year plan and gave him the March 7, 2014 warning.

(6) An EEOC investigator investigated claimant's April 16, 2014 complaint and issued an investigation report. Claimant received the report on October 27, 2014 and determined he would have to request a hearing to resolve the case. On October 28, 2014, claimant requested a hearing regarding his complaint. Claimant expected to have to wait up to three years for the hearing.

(7) Claimant had corneal dystrophy, high blood pressure, and depression. Stress made his medical conditions worse. Claimant took one or two sick days per week due to stress and exhaustion. Claimant did not discuss his working conditions with his doctor and claimant's doctor did not advise him to leave work. By October 27, 2014, claimant had used all his paid sick leave.

(8) On October 28, 2014, claimant left work due to alleged discrimination based on his age and gender, and due to alleged retaliation for filing complaints regarding the alleged discrimination.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude the 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 corneal dystrophy, high blood pressure, and depression. His conditions constituted permanent or long-term "physical or mental impairments" 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 impairments. 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 his conditions would have continued to work for the employer for an additional period of time.

Claimant quit work because he perceived the employer as discriminating against him because of his age and gender, and because he filed complaints alleging discrimination. Claimant asserted that he could no longer tolerate the discrimination he was experiencing at work while waiting three years for a hearing about his complaint. Exhibit 1, Table 1, at 9. Claimant was dissatisfied that he was not chosen for the division chief position, that the employer had negotiated a ten-year plan that could have eliminated his position, and that his supervisor gave him a warning on March 7, 2014. However, viewed objectively, the record does not show that the employer's actions were because of claimant's age, gender, or retaliation for filing complaints. Moreover, claimant continued to work for the employer for seven months after the final alleged incident of discrimination occurred on March 7, 2014. Absent a preponderance of evidence that the employer's actions were due to discrimination, claimant's work environment did not pose a situation of such gravity that no reasonable and prudent person with claimant's physical or mental impairments would have continued to work for his employer for an additional period of time. Claimant thus failed to show that he quit work with good cause due to discrimination based on his age, gender, or having filed complaints.

Claimant's physical or mental impairments included corneal dystrophy, high blood pressure, and depression. Claimant's asserted that work stress exacerbated his medical conditions, and caused him to feel exhausted. To the extent claimant needed time off work due to exhaustion and the impact of work stress on his health, the employer had permitted claimant to take one or two days off work per week, without consequence. The record fails to show that the employer would prohibit claimant from taking additional time off work because he had exhausted his paid sick leave or that claimant's medical conditions were so serious he had no reasonable alternative but to quit work.

In sum, claimant did not establish that he had good cause to quit due to discrimination, retaliation, or the impact of his workplace on his health. Claimant therefore failed to establish that he quit work with good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-31186 is affirmed.

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

DATE of Service: February 26, 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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