

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0105

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 123915). Claimant filed a timely request for hearing. On January 13, 2015, ALJ Upite conducted a hearing, and on January 16, 2015 issued Hearing Decision 15-UI-32001, affirming the Department's decision. On February 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Adidas Sales, Inc. employed claimant from April 15, 2007 to June 6, 2014 as a retail marketing manager.

(2) Claimant managed marketing for 85 stores in the employer's outlet division. Until October 2013, claimant worked 50 to 60 hours per week. In March 2013, the employer reduced the marketing staff, and claimant's share of the work load increased.

(3) In April 2013, claimant's doctor warned claimant that claimant was pre-diabetic, and that she needed to reduce her work hours and stress levels because they were impacting her health.

(4) In April 2013, claimant discussed her doctor's concerns with her manager, and the manager told claimant they would develop a plan to address her work load. Claimant asked her manager about other, less stressful positions with the employer.

(5) In May 2013, claimant's manager quit. Claimant explained her health concerns to a new interim manager, but the manager did not reduce claimant's work load. Claimant began to experience difficulty concentrating, light-headedness, fatigue, headaches, and insomnia.

(6) In August 2013, claimant met with her doctor again, who diagnosed claimant with diabetes and told claimant her stress was contributing to her diabetes. Claimant's doctor recommended she immediately

take a medical leave of absence from work to control her diabetes. Claimant's doctor referred claimant to a therapist for depression and anxiety symptoms, and a nutritionist.

(7) Claimant took a leave of absence for approximately two months. During that time, claimant began taking medication and attending therapy sessions to learn stress management techniques. She also began exercising and employed a nutritionist to help her control her diabetes through diet.

(8) When claimant returned to work in October 2013, she reduced her work schedule to a maximum of 40 hours per week. Claimant's manager had quit during claimant's leave of absence, and due to layoffs, claimant shared her work with only one other team member and a temporary contractor. Claimant did not experience a reduction in stress due to her reduced hours.

(9) In March 2014, claimant's team member was laid off work. In May 2014, the employer discharged the contractor who had worked with claimant. There was tension in the office due to fear of additional layoffs. The employer planned to open 20 more stores during the remainder of 2014. In addition to her other responsibilities, claimant was responsible for the marketing and grand openings for the new stores. Claimant began to again experience headaches, insomnia and fatigue.

(10) In May 2014, claimant met with her doctor, who recommended she take another leave of absence from work to control her diabetes by reducing her stress level. Claimant's therapist also told claimant her anxiety symptoms were not improving because of her stress from work.

(11) On June 6, 2014, claimant left work to reduce her stress and control her diabetes.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant 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 P2d 722 (2010). Claimant had diabetes, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

In Hearing Decision 15-UI-32001, the ALJ found that claimant did not have good cause to quit because she had reasonable alternatives to quitting. The ALJ suggested that claimant could have requested another medical leave of absence, and could have pursued other, less stressful jobs with her employer.¹ Claimant voluntarily left work because the work-related stress was making her diabetes symptoms worse. The record does not show that taking another leave of absence would have improved claimant's

¹ Hearing Decision 15-UI-32001 at 3.

ability to continue working, and would not have been futile. Claimant took a two-month medical leave in 2013, but returned to the same stressful environment, and her symptoms gradually became serious enough again that her doctor recommended she take another medical leave of absence in May 2014. Claimant had already tried unsuccessfully to reduce her workplace stress through therapy and a reduction in hours. She was, however, unable to reduce her workplace stress and the employer did not respond to her requests to reduce her workload and responsibility. To the contrary, repeated layoffs in claimant's department made claimant's relative responsibility grow during 2013 and 2014. Claimant proved by a preponderance of the evidence that continuing to work for the employer and taking another leave of absence from work was not a reasonable alternative for her.

Nor does the record show that seeking an alternate position with the employer was a reasonable alternative for claimant. Claimant discussed other work with one of her managers, but the record does not show the employer had positions open that were both suitable for claimant and less stressful, especially in the midst of repeated layoffs in claimant's department. Moreover, the process of seeking other work with the employer may have merely replaced one stressor with another. Thus, the record fails to show that seeking alternate work with the employer prior to quitting was a reasonable alternative for claimant.

In sum, claimant showed by a preponderance of the evidence that no reasonable and prudent person with diabetes would continue working for the employer for an additional period of time. Claimant therefore quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-32001 is set aside, as outlined above.²

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

DATE of Service: March 13, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.