

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0187

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 6, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 114327). Claimant filed a timely request for hearing. On February 11, 2015, ALJ Murdock conducted a hearing, and on February 13, 2015 issued Hearing Decision 15-UI-33563, affirming the Department's decision. On March 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. In support of her argument that she quit work with good cause, claimant asserted that the hearing proceedings were unfair because the ALJ did not allow her to call witnesses to corroborate her testimony regarding her supervisor's alleged treatment of her, failed to "adequately" review claimant's evidence regarding her alleged health issues, and was biased in favor of the employer.

With respect to the ALJ excluding claimant's witnesses, OAR 471-040-0025(5) (August 1, 2004) states that irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible. *Id.* However, erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party. *Id.* In this case, the ALJ allowed claimant a reasonable opportunity to testify regarding her supervisor's behavior toward her. The ALJ determined that corroborating testimony was not material to whether claimant had good cause to quit work because the issue was whether claimant complained to the employer about the supervisor's alleged behavior, and gave the employer a reasonable opportunity to address her complaint. Transcript at 40-43. We agree with that determination. Claimant therefore failed to establish that the ALJ erred in excluding her witnesses, let alone that any such error substantially prejudiced claimant's rights.

Although claimant may disagree with the ALJ's findings of fact and conclusions of law regarding her alleged health issues, the record shows that the ALJ reviewed and considered claimant's evidence on those issues. With respect to claimant's assertion that the ALJ was otherwise biased in favor of the

employer, we have reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1).

Finally, claimant's argument that she quit work with good cause was based, in part, on information that not offered into evidence at the hearing, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from doing so. 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) Easter Seals Oregon employed claimant as a program manager from December 2, 2013 to December 5, 2014.

(2) In late 2013 or early 2014 claimant began experiencing pain in her upper back. Non-prescription medications failed to alleviate the pain. Claimant's primary physician treated her with various prescription medications, which also failed to alleviate the pain. On April 3, 2014, claimant was treated at a hospital emergency room, where she was diagnosed with "Myositis [muscle inflammation] and Myalgia [muscle pain], unspecified." Exhibit 1 at 3, 5.

(3) On April 21, 2014, claimant's primary physician noted that claimant felt her pain was related to severe work stress. Claimant was diagnosed with "musculoskeletal strain myofascial pain syndrome of the right scapula," and counseled regarding stress reduction strategies at work and the importance of changing position frequently. Exhibit 1 at 9. Claimant also was placed on a six week therapeutic trial of pain medication and physical therapy. Claimant subsequently received acupuncture and massage therapy, but continued to experience chronic back pain.

(4) Claimant attributed her chronic back pain to work related stress, in particular what she considered the "insurmountable pressure, coercion, and hostile environment in the form of yelling and demeaning comments on the part of [her] direct supervisor," and her supervisor's "crisis and panic" management style. Transcript at 6, 8. Claimant complained to her supervisor and Rosalie Butler, the employer's chief financial officer (CFO), chief operating officer (COO) and human resources director (HR director), that her supervisor was "authoritarian" in her communications with claimant. During her August 19, 2014 performance evaluation, claimant informed her supervisor and Ms. Butler that she was quitting work, in part, for that reason.

(5) On August 20, 2014, claimant rescinded her resignation. After August 20, 2014, claimant's supervisor attempted to communicate with claimant in a more positive manner, and believed that claimant's complaints about her had been resolved. Claimant noticed only temporary improvement in her supervisor's communication style, however.

(6) On October 27, 2014, claimant saw a chiropractor, who noted that claimant was in a significant amount of "fight or flight and stress physiology," that she had "subluxations in the cervical, thoracic and lumbar [sic] areas and severe misalignment in the sacral area," and that she "has had insomnia and is experiencing a tremendous amount of work related stress." Exhibit 1 at 10. The chiropractor advised claimant to consider changing jobs.

(7) On November 3, 2014, claimant notified the employer she was quitting work, effective December 3, 2014. The employer subsequently asked claimant to continue working until December 5, 2014, and claimant agreed.

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 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 suffered from chronic back pain, 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.

At hearing, claimant asserted that she quit work due to her chronic back pain, which she attributed to work related stress, in particular what she considered the “insurmountable pressure, coercion, and hostile environment in the form of yelling and demeaning comments on the part of [her] direct supervisor,” and her supervisor’s “crisis and panic” management style. Transcript at 6, 8. At hearing, however, Ms. Butler, the employer’s CFO, COO and HR Director, testified that claimant complained only that that her supervisor was “authoritarian” in her communications with claimant, and not that she was coercive or hostile, yelled at claimant, made demeaning comments toward her, or had a “crisis and panic” management style. Transcript at 29-30. Ms. Butler further testified that claimant complained only that her job was very stressful, and not that it was negatively affecting her health. Transcript at 30. Although claimant disputed Ms. Butler’s testimony on those issues, we find the evidence, at best, equally balanced. Finally, Ms. Butler testified that if claimant had complained about her health issues, the employer would have done whatever it could to accommodate her, including granting claimant a medical leave of absence. Transcript at 31. Claimant conceded that the employer was “pretty much by the book,” and never would have denied her a leave of absence. Transcript at 23.

Claimant’s supervisor testified that she attempted to communicate with claimant in a more positive manner after August 19, 2014, and believed claimant’s complaint about her had been resolved. Transcript at 36-37. Although claimant noticed only temporary improvement, the record fails to show she complained again before quitting work. Absent a showing that doing so likely would have been futile, and that the employer likely was unwilling or unable to accommodate claimant’s health issues, claimant failed to establish she had no reasonable alternative but to quit work when she did. The fact that a chiropractor advised claimant to consider changing jobs is insufficient to show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant failed to establish she quit work with good cause, and therefore is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-33563 is affirmed.

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

DATE of Service: April 22, 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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