

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0201

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105200). Claimant filed a timely request for hearing. On February 2, 2015, ALJ Shoemake conducted a hearing, and on February 3, 2014 issued Hearing Decision 15-UI-32085, affirming the Department's decision. On February 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she described the previous times she was assigned to work at Solar World, one of the employer's clients. Because these past experiences were not relevant to the work separation at issue or the reasons why claimant decided to leave work when she did, EAB did not consider this new information. *See* OAR 471-041-0090(2)(a) (October 29, 2006). Claimant also presented new information about the work separation at issue, but did not explain why she did not present this information at the hearing or otherwise show that factors or circumstances beyond her reasonable prevented her from doing so as required by OAR 471-041-0090(2). For that reason, EAB did not consider that new information when evaluating claimant's claim. *See* ORS 657.275(2). EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Ranstad US, LP employed claimant from September 8, 2014 until November 21, 2014. The employer was an employee staffing agency. The employer assigned claimant to work in the accounts payable department of one of its clients, Solar World.

(2) Before accepting the assignment at Solar World, claimant expressed her concern to Solar World's accounting manager about the overtime hours that she thought employees in the accounting department might be expected to work. Claimant understood the accounting manager to "assure" her that overtime would only be "occasionally" required of her and that the overtime would usually occur at the end of a month when Solar World closed its books. Audio at ~10:40, ~10:52.

(3) During the week of September 7, 2014 through September 13, 2014, claimant worked 22.9 hours at Solar World. Exhibit 1 at 9. During the week of September 14, 2014 through September 20, 2014, claimant worked 35.32. *Id.* During the week of September 21, 2014 through September 27, 2014, claimant worked 46.06 hours, or 6.06 hours of overtime. During the week of September 28, 2014 through October 4, 2014, claimant worked 39.6 hours. *Id.* During the week of October 5, 2014 through October 11, 2014, claimant worked 42.74 hours, or 2.74 hours of overtime. Exhibit 1 at 7, 9. During the week of October 12, 2014 through October 18, 2014, claimant worked 20.87 hours. Exhibit 1 at 9. During the week of October 19, 2014 through October 25, 2014, claimant worked 26.7 hours. During the week of October 26, 2014 through November 1, 2014, claimant worked 47.66 hours, or 7.66 hours of overtime. *Id.* During the week of November 2, 2014 through November 8, 2014, claimant worked 48.03 hours, or 8.03 hours of overtime. *Id.* Over these nine weeks, claimant did not work overtime during five of them. Of the remaining four weeks, the range of the overtime that claimant worked was 2.74 to 8.03 hours, for an average of 6 hours overtime per week.

(4) By the beginning of November 2014, claimant thought that Solar World was requiring her to work an excessive amount of overtime and that the time demands of the assignment were "extraordinary" and entailed "almost non-stop overtime." Audio at ~9:40. Before November 7, 2014, claimant did not tell Solar World or the employer that she thought that she was working more hours than was healthy for her or that other harms were resulting from the hours she was expected to work. On November 6, 2014, claimant visited her physician. Claimant told the physician that she felt stress and anxiety about work and that she thought the job at Solar World was negatively affecting her health. Audio at ~17:32. The physician told claimant that she did appear to be exhibiting some symptoms of stress and that her blood pressure seemed elevated during the visit, but did not diagnose a health condition. The physician drafted a note for claimant which stated only that claimant "described difficulty working at her current job" and would "benefit from alternate options." Exhibit 1 at 1. The note did not include a diagnosis of any health condition, did not state that claimant needed to reduce her overtime hours, did not request workplace accommodations for claimant, did not recommend that claimant take a leave of absence from work and did not advise that claimant needed to quit work. *Id.* Claimant did not give this note to the employer or to Solar World.

(5) On November 7, 2014, claimant went to her supervisor at Solar World and told the supervisor that the hours she was working were negatively affecting her. She told the supervisor that she did not like working the hours that she had been working and that she did not want to continue doing so. The supervisor told claimant the hours she had been working were "the demands of the department" and there "was nothing we can do about it." Audio at ~12:28. Although one of the employer's representatives was present during claimant's discussion with her supervisor at Solar World, claimant never raised concerns about the hours that Solar World assigned to her with the employer's site manager, who worked on Solar World's premises and one of whose duties was to address the concerns of the employees assigned to the site and Solar World about conditions in the workplace.

(6) On November 7, 2014, during her discussion with her supervisor, claimant gave her a resignation note stating that she was quitting work in two weeks.

(7) Two weeks later, on November 21, 2014, claimant left the workplace and did not return.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 P3d 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 the outset, OAR 471-030-0038(4) modifies the standard for objectively demonstrating good cause for leaving work if a claimant demonstrates that he or she had a permanent or long-term physical or mental impairment at the time he or she decided to leave work. Although claimant testified that she experienced "stress" and "anxiety" due to the hours that she was required to work, she conceded that her physician did not diagnose any conditions when she saw her on November 6, 2014. Audio at ~19:20. Aside from testifying vaguely that she had "dreams about work" and that her blood pressure was somewhat elevated during her physical examination on November 6, 2014, claimant did not describe any specific of symptoms that might be associated with a recognized long-term health condition or impairment. *Id.* There is insufficient evidence in the record to demonstrate that claimant had a long-term physical or mental impairment, or that claimant was entitled to use the modified standard for establishing good cause.

While claimant testified that she was working overtime "almost non-stop" for Solar World, and that the overtime was having a detrimental impact on her health and well-being, an examination of the work records that she submitted in Exhibit 1 shows that, before she decided to quit work, she had worked overtime in less than half of the weeks she worked up leading up to November 7, 2014. Of the weeks that she worked overtime, she worked an average of approximately 6 hours of overtime, and not the approximately four to ten hours of overtime that she contended that she worked on average each week. Audio at ~11:50. It does not appear that the number of overtime hours she was working each week harmed claimant or were so unreasonably excessive that, viewed alone, they constituted in and of themselves an objectively grave reason to leave work. Other than stating that she "needed a good work-life balance," claimant did not identify any specific harm to herself or others that resulted from the overtime that she actually worked or that she anticipated she would work in the future. For example, claimant did not describe any concretely damaging impacts of her work and gave no context to the "stress" and "anxiety" that she broadly contended that she experienced from the overtime work. In connection with the gravity of the reasons that allegedly motivated claimant's decision to leave work, it is also significant that, after a consultation with claimant, claimant's physician did not recommend that she quit work to protect her physical or mental health or did not diagnose any symptoms arising from the workplace that were sufficiently adverse to claimant to require further treatment. Finally, we do not find persuasive claimant's contention that after she was fully trained in her job, she expected she would be required to work at least fifty hours per week. Claimant's contention concerning future overtime was based on a coworker's impression that claimant had yet to learn and assume thirty percent of her work duties. A coworkers' casual comment, and claimant's speculations about it, are not sufficient to establish, more likely than not, that the employer intended to require claimant to work such hours or that any identified grave harm to claimant would result if she were. Audio at ~21:00. Although we are

sympathetic to claims of mental health harms in the workplace, it is not sufficient for a claimant to broadly assert their existence in conclusory fashion without at least some corroborating details of their concretely harmful impacts. On this record, claimant did not demonstrate, more likely than not, that objectively grave reasons motivated her decision to leave work.

Even if claimant had demonstrated that the impacts of the hours that she was working were significantly adverse to her health or well-being, she did not take the steps of a reasonable and prudent person, who wanted to continue working, to preserve her job. Although claimant saw her physician the day before she decided to resign and had the presence of mind to request a physician's note, she apparently did not seek a physician's authorization for a workplace accommodation based on her health. Audio at ~29:01. While claimant testified that she raised her concerns about the overtime hours she was expected to work with her supervisor at Solar World, her testimony does not refer to any statements in which she alerted the supervisor to significant adverse health consequences from those hours, does not state that she gave the physician's note to the supervisor and does not state that she explicitly told the supervisor that she thought she might need to quit if her overtime hours continued. Audio at ~12:28, ~17:32, ~22:51. Even though claimant had been introduced to the employer's site manager at Solar World, she did not speak to that manager about the alleged effects on her of the overtime she was working or attempt through that manager to arrange a work schedule for her at Solar World in which the alleged time requirements of her position might be reduced. Audio at ~12:28, ~33:54, ~35:40. Although claimant testified that she did not make more efforts to consult with Solar World or the employer because she thought it would be futile to attempt to reduce the time demands of her position, claimant did not present sufficient evidence from which it can be reasonably inferred that such efforts would have been fruitless. Before deciding to quit work, a reasonable and prudent employee, exercising ordinary common sense, who wanted to remain employed, would have taken the steps referred to above, or other reasonable steps to determine if Solar World or the employer would reduce her hours to a level that reasonably did not jeopardize her health. Because claimant did not take the steps of a reasonable person to maintain her employment before she decided to leave work, she also did not establish good cause for leaving work.

Claimant did not show that she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-32805 is affirmed.

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

DATE of Service: April 10, 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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