

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0263

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 73743). Claimant filed a timely request for hearing. On March 4, 2015, ALJ Kirkwood conducted a hearing and issued Hearing Decision 15-UI-34520, affirming the Department's decision. On March 11, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Sykes Enterprises Inc. employed claimant from May 6, 2013 to December 12, 2015.

(2) Claimant suffered from chronic hypertension and kidney disease. He initially worked for the employer as a customer service agent at its call center. Claimant found the work very stressful, which exacerbated his hypertension, and therefore his kidney disease. During the last several months of claimant's employment, he worked for the employer as a trainer. Although claimant found that work a little less stressful, it also exacerbated his hypertension, and therefore his kidney disease.

(3) Claimant's doctor advised him to reduce his work-related stress. Claimant discussed the matter with a manager, who allowed claimant to delegate some of his work to other employees. However, doing so did not reduce claimant's stress.

(4) Claimant considered requesting to work for the employer as a team manager, or possibly as a human resources employee. However, claimant had observed the employer's team managers, and determined that their work was more stressful than his work as a trainer. Claimant also determined that he was not qualified to work for the employer as a human resources employee.

(5) On or about December 2, 2014, claimant notified the employer that he was quitting work, effective December 12, 2014, due to his work-related stress and health issues. Claimant's managers informed him that he could request a medical leave of absence or intermittent medical leave. However, claimant determined that neither would resolve the situation because he would return to the same stressful work environment, behind in his work. Claimant therefore did not request a medical leave of absence or intermittent medical leave.

(6) Claimant quit work because the employer's stressful work environment exacerbated his chronic hypertension, and therefore his chronic kidney disease.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit work with 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 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 suffered from chronic hypertension and kidney disease, permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h). A claimant with those 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.

Claimant quit work because the employer's stressful work environment exacerbated his chronic hypertension, and therefore his chronic kidney disease. In Hearing Decision 15-UI-34520, the ALJ concluded that no reasonable and prudent person in claimant's situation would have continued to work for the employer indefinitely.¹ The ALJ further concluded that a medical leave of absence likely would have been futile, and therefore not a reasonable alternative to quitting.² However, the ALJ ultimately concluded that claimant quit work without good cause because he did not attempt intermittent medical leave, which would not have reduced his stress, but might have allowed him to prolong his employment while looking for other suitable work.³

We agree that no reasonable and prudent person with chronic hypertension and kidney disease would have continued to work indefinitely in an environment that exacerbated those conditions. We also agree

¹ Hearing Decision 15-UI-34520 at 3.

² *Id.*

³ *Id.*

that it likely would have been futile for claimant to take a medical leave of absence, and that intermittent medical leave likely would not have reduced his stress, given that he would have returned to the same stressful work environment, behind in his work. However, we disagree with the ALJ's conclusion that intermittent medical leave nevertheless was a reasonable alternative to quitting. Taking intermittent medical leave while searching for other work still would have required claimant to continue working for an indefinite period of time in an environment that exacerbated his serious medical conditions. As stated above, no reasonable and prudent person would have done so.

Finally, requesting to work for the employer as a team manager, or possibly as a human resources employee, was not a reasonable alternative to quitting, given claimant's observation that team managers' work was even more stressful, and his determination that he was not qualified to work for the employer as a human resources employee.

We therefore conclude that claimant quit work with good cause. Claimant is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-34520 is set aside, as outlined above.

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

DATE of Service: April 28, 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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