

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0650

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 163803). Claimant filed a timely request for hearing. On May 26, 2015, ALJ Seideman conducted a hearing, and on May 27, 2015 issued Hearing Decision 15-UI-39081, affirming the Department's decision. On June 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. EAB also considered the employer's written argument.

FINDINGS OF FACT: (1) Driftwood Shores Surfside Inn employed claimant from January 25, 1999 until March 10, 2015, last as a chief engineer in its maintenance department.

(2) In 2011, claimant was treated for anxiety and panic attacks, which he attributed to the demands of his job. Claimant's physician prescribed the drug Xanax to lessen the anxiety he experienced. Exhibit 6 at 1; Exhibit 7 at 1. Claimant had six sessions with a counselor in 2011 to address his anxiety. On September 20, 2011, the counselor determined that further sessions were not necessary because the treatment goals had been met, claimant's prognosis was good and he appeared capable of managing his anxiety and panic without continued support. Exhibit 6 at 1.

(3) In approximately 2013, the employer hired a new general manager to supervise its operations. The general manager was claimant's supervisor. From the time she was hired, the general manager noticed

that claimant was a “stressed kind of individual” and an “intense” person. Audio at ~23:28, ~29:20. On several occasions, the general manager coached to claimant on improving his workplace relationships. The assistant engineer, who worked closely with claimant, also observed that claimant “was always a stressed person.” Audio at ~32:00. Claimant never told the general manager or the assistant that he had an anxiety disorder or panic attacks.

(4) In June 2014, claimant injured his neck at work. Claimant was on leave from work due to his neck injury starting on August 1, 2014. Although claimant was scheduled to return to work sometime in October 2014, the leave was extended to November 16, 2014 because of complications. On November 16, 2014, claimant returned to work.

(5) Sometime before February 2015, claimant took his granddaughters into his home and began to provide foster care for them. Sometime in or before February 2015, claimant’s home was damaged in a storm and needed a new roof and other repairs. Claimant thought he needed to refinance his home in order to repair the roof and experienced difficulties in doing so. Due to financial needs, claimant considered filing a petition for a personal bankruptcy.

(6) By early February 2015, claimant had discussed with both the general manager and the assistant engineer his concerns about whether he could arrange financing for a new roof and other house repairs. Claimant had also confided to the general manager that he was providing day-to-day foster care for his granddaughters and that he was considering filing for bankruptcy. On February 12, 2015, claimant again discussed these personal issues with the general manager. The general manager told claimant that it seemed he needed time away from work to make the necessary arrangements to address these personal issues. The general manager told claimant to take two weeks off from work so he could do so and, to emphasize that she was serious about allowing him to take the time off, she also told claimant, “If you don’t take it [the two weeks off], I’ll have to kick you out.” Audio at ~25:40. The general manager instructed claimant that she “didn’t want him to think about this place” when he was off, and to just try to “get his business taken care of.” Audio at ~26:08. Claimant did not mention to the general manager during this conversation that he needed the time off because of anxiety or panic attacks or that he experienced symptoms of those conditions. Claimant was off from work from February 13, 2015 until March 2, 2015.

(7) On March 2, 2015, when claimant returned to work, he thought that a consultant hired by the employer to install new windows had not communicated with him adequately about the project. Claimant then inspected the installation and thought the consultant had not used proper materials. Exhibit 1 at 1-2. On March 4, 2014, claimant inspected the project again and concluded that the installation was inadequate. Exhibit 1 at 2. On March 4, 2014, claimant called the consultant and “vented [his] frustration.” Exhibit 1 at 2. On March 6, 2015, the consultant threatened to resign from the installation job because of claimant’s phone call, and claimant’s perceived interference with his authority. Exhibit 4. On March 10, 2015, the general manager issued to claimant a written warning for speaking disrespectfully to the consultant and not recognizing that he did not supervise consultant’s work, but the general manager did. Exhibit 3. Claimant was given the warning outside of the presence of the general manager. Claimant never spoke to the general manager about the warning she had issued. The March 10, 2015 warning was the first disciplinary sanction that claimant received in sixteen years of employment.

(8) On March 10, 2015, after claimant received the warning, he discussed his reaction with the assistant engineer. Claimant told the assistant that “they were basically after him” and “he wanted to leave on his own terms,” which the assistant interpreted to mean that he was going to quit work rather than waiting to be further disciplined or discharged. Audio at ~32:36, ~32:58.

(9) On March 10, 2015, without speaking to the general manager, claimant submitted a written resignation to the employer effective immediately. Exhibit 1. In the resignation letter, claimant discussed his belief that the general manager had not adequately communicated with him, his financial issues, the perceived inadequacy of the consultant’s window installation work and his belief that the general manager wanted him to leave so she could reduce overall operating expenses. Exhibit 3 at 1-2. Claimant did not refer to stress, anxiety or panic attacks contributing to his decision to leave. *Id.* Claimant left a voicemail message for the general manager stating only that he was resigning. Audio at ~27:56.

CONCLUSIONS AND REASONS: 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 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). For purposes of this decision, it is assumed that the anxiety and panic attack attacks that claimant contended he experienced were permanent or long-term “physical or mental impairments” 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 contended that he quit work because persistent anxiety and panic attacks prevented him continuing to work, and did not allude to any ongoing problems with the general manager or anything else that contributed in any way to his decision. Audio at ~10:39, ~11:46, ~13:00, ~17:10. Accepting claimant’s testimony about his reasons for quitting, there is little concrete evidence to support that anxiety and panic actually caused him to leave work other than his assertions. He did not mention panic or anxiety in his lengthy resignation letter, in which he disclosed other personal issues. Exhibit 1 at 1-2. Although claimant testified that he provided as hearing exhibits all available medical records about his treatments for anxiety and panic attacks, the treatment records stopped in 2011, and noted that his 2011 treatment concluded successfully, with all treatment goals having been met. Audio at ~ 19:47, Exhibit 6; Exhibit 7. The very brief physician’s note that claimant submitted from the more recent date of May 13, 2015 does not refer to any medical conditions, any diagnoses, any symptoms, or any treatments, successful or not, around the time of claimant’s March 10, 2015 resignation. Exhibit 5. The basis on which the physician concluded that “it was in his [claimant’s] best interest to resign from his position” was not clear. Finally, claimant conceded that he did not inform the general manager or any employer representative that he was experiencing anxiety or panic attacks of such a severity that he was unable to continue working, which also undercuts the contention that he quit work as a result of those conditions. While both the general manager and the assistant engineer agreed that claimant had always appeared to

be high strung person, neither of them observed physical manifestations of the stress, panic attacks or anxiety from which claimant contended that he was suffering. Audio at ~24:01, 31:16. There is scant evidence supporting that stress, anxiety and panic attacks likely caused claimant to leave work.

However, even if claimant was experiencing panic attacks and anxiety around the time that he decided to leave work, he did not take the actions of a reasonable and prudent person, who had anxiety and panic attacks, to try to preserve his employment. While it appears that treatment had successfully abated claimant's anxiety and panic attacks in 2011, claimant did not establish that he seriously pursued further treatment before he decided to quit, and, according to the information that claimant provided, he had not been examined by a physician since approximately a month before he resigned. Audio at ~18:39. A reasonable and prudent person who had successfully undergone treatment of anxiety and panic attacks, who was considering leaving work because he was experiencing anxiety and panic attacks, would not have left work before attempting treatment again and determining whether treatment was likely to control his symptoms sufficiently to allow him to continue working. A reasonable and prudent person, with anxiety and panic disorders, also would not have decided he needed to quit work as a result of those disorders until he had informed his employer of those conditions and sought its assistance in managing them in the workplace, whether by adjusting his schedule, duties, or taking time off to obtain treatment. Although claimant contended that he did not tell the employer of those conditions because he did not want to expose his "weakness," the grounds for his claimed unwillingness were belied by the fact that he had in the past freely disclosed issue in his personal life both to the general manager and the assistant engineer, such as about his personal finances and his family situation. It is further unlikely that claimant would have not have sought the assistance of the general manager if he had wanted try to maintain his employment rather than quitting, since the general manager only one month before claimant resigned had on her own initiative authorized a leave for claimant when she suspected he needed some time away from work to deal with his financial concerns and his situation in providing foster care for his granddaughters. Claimant reasonably would not have feared disclosing his health conditions to the general manager when she had so recently demonstrated an apparently sincere willingness to help him resolve some very personal issues. On this record, a reasonable and prudent person in claimant's situation who was experiencing anxiety and panic attacks would not have concluded that he needed to quit work as a result of those conditions before seeking treatment for them and before seeking assistance from the general manager and the employer.

Claimant did not show that no reasonable and prudent person with anxiety and panic attacks would have continued working for the employer under the circumstances he faced, and he did not show that he had no reasonable alternative other than to quit work when he did. Claimant did not demonstrate he had good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-39081 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: July 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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