

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0651**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #133709). Claimant filed a timely request for hearing. On May 12, 2015, ALJ M. Davis conducted a hearing, and on May 18, 2015 issued Hearing Decision 15-UI-38638, affirming the administrative decision. On June 1, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Alternative Services Oregon employed claimant as a behavioral specialist from September 30, 2013 to January 15, 2015.

(2) On January 20, 2013 claimant had a heart attack which resulted in partial damage to her heart. If claimant became stressed, her blood pressure became elevated, which in turn put pressure on her weakened heart muscle.

(3) On October 30, 2014, claimant's supervisor gave her a poor performance evaluation. Claimant disagreed with the evaluation because she believed it was based on assumptions and not facts. Claimant's supervisor told her that he would not place her on a corrective action plan, but expected her to immediately improve her performance.

(4) Claimant attempted to improve her performance, but found it difficult to do so. Claimant's supervisor expressed his displeasure with her performance by yelling at and ridiculing her. Claimant was very stressed by her supervisor's criticism. Claimant did not complain to about her supervisor's behavior to his superior because she was his wife. Claimant did not complain about her supervisor's behavior to the employer's human resources department because it was located in Portland, Oregon and

claimant worked in Medford, Oregon. Claimant was also fearful that her supervisor would take disciplinary action against her if she complained to the employer's human resources department.

(4) In October or November 2014, claimant's supervisor became angry at claimant about medication a doctor had prescribed for a client claimant supported. The supervisor yelled at claimant, using foul language, and told claimant she was incompetent. Audio at 6:43.

(5) On December 15, 2015, claimant told her supervisor she was quitting her job and that January 15, 2015 would be her last day of work. Claimant voluntarily left work because she believed she would be discharged if she continued to work for the employer, and because she was afraid that the stress she experienced at work was harmful to her health.

**CONCLUSION AND REASONS:** We agree with the ALJ that 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). The standard for good cause is modified for a claimant with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with such an impairment 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 his employer for an additional period of time. Claimant suffered partial damage to her heart due to her January 2012 heart attack, damage that appears to be long-term or permanent. Claimant's decision to leave work is therefore evaluated according to the actions of a reasonable and prudent person with a partially damaged heart.

To the extent claimant quit her job because she believed she would be discharged, she failed to show good cause for leaving when she did. A claimant who quits work to avoid a possible discharge may establish good cause if the claimant shows that discharge was reasonably certain and likely imminent, and would not be for misconduct. We have repeatedly held that a claimant does not face a reasonably certain or likely imminent discharge if the employer identifies deficiencies in a claimant's work performance and directs claimant to improve his performance. *See e.g.*, Appeals Board Decision 2015-EAB-0517 (June 23, 2015) (claimant's discharge was neither reasonably certain or likely imminent, when the employer engaged in extensive efforts to help claimant correct identified deficiencies in his performance).

To the extent claimant quit her job because she was afraid that the stressful situation caused by her supervisor's angry outbursts would damage her health, she failed to demonstrate good cause for leaving. Claimant provided no evidence that she consulted a doctor about her medical condition, or that she was experiencing elevated blood pressure that would put pressure on her weakened heart muscle. As a result, she failed to show that her fears about her health were objectively reasonable. Claimant also had the reasonable alternative of complaining to the employer's human resources department about her

situation. Other than location, claimant provided no reason why the human resources department would have been unresponsive to her complaints and her fear of retaliation by the supervisor for making any such complaints.

Because claimant failed to show that her discharge was reasonably certain or likely imminent, or that her health was jeopardized by her work environment, she failed to establish that no reasonable and prudent person with a weakened heart would have continued to work for the employer. We therefore conclude that claimant did not have good cause for quitting her job when she did. Claimant is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-38638 is affirmed.

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

**DATE of Service:** July 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](http://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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