

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0769

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 150740). The employer filed a timely request for hearing. On May 28, 2015, ALJ M. Davis conducted a hearing, and on June 3, 2015 issued Hearing Decision 15-UI-39472, concluding claimant voluntarily left work without good cause. On June 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Safeway Stores, Inc. employed claimant from June 24, 2013 to February 26, 2015.

(2) Claimant experienced increasing amounts of stress at work, beginning in August 2014 when she broke her finger and was placed on light duty, working decreased hours, receiving poor treatment from her supervisor, being assigned duties she felt she did not have the training or experience to perform, and a social media posting claimant's coworker made about her. On February 20, 2015, claimant experienced chest pains and sought emergency medical treatment. She was told that the chest pains were caused by anxiety and stress, which claimant attributed to her working conditions.

(3) On February 22, 2015, claimant gave the employer two weeks notice that she intended to quit work. On February 26, 2015, claimant returned to work. She again experienced chest pains. Her physician referred her to urgent care for treatment, and claimant again was told that her symptoms were caused by stress. Claimant was restricted from returning to work pending additional medical treatment by her regular physician. Claimant accelerated her quit date, and did not return to work after February 26, 2015.

(4) Although claimant was eligible to request a leave of absence from the employer, claimant's physician recommended that claimant quit work.

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 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.

In Hearing Decision 15-UI-39472, the ALJ concluded that claimant quit work without good cause, reasoning that although "claimant may have faced a grave situation," applying for a leave of absence or asking to change her position in the store were reasonable alternatives to quitting work.¹ However, the ALJ's analysis failed to mention that claimant's physician advised her to quit her job. Audio recording at ~34:20. Although the employer might have been willing to consider claimant's application for a leave of absence or transfer, we conclude that those were not reasonable alternatives for a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, who had recurring chest pains because of work-related stress, could not enter her workplace without experiencing chest pains, and was advised by her physician to quit work for the sake of her health. We therefore conclude that claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-39472 is set aside, as outlined above.²

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

DATE of Service: August 6, 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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¹ Hearing Decision 15-UI-39472 at 3.

² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.