

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0813

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 28, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 11599). Claimant filed a timely request for hearing. On June 24, 2015, ALJ S. Lee conducted a hearing, and on July 1, 2015 issued Hearing Decision 15-UI-40966, affirming the Department's decision. On July 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that included facts not presented during the hearing. Claimant did not explain why she did not offer this new information into evidence during the hearing as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider the new facts contained in claimant's argument. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Service Linen Supply employed claimant to sell its products and services from May 29, 2015 until April 10, 2015.

(2) During claimant's employment, the employer's main office was in Seattle, Washington and claimant worked at its satellite office in Portland, Oregon. All of the employer's products were kept in Seattle, and if claimant sold any products or services to customers in the Portland area the products were shipped from Seattle to the customers or the services were performed in Seattle. The employer's customer service phone center was located at the main office in Seattle.

(3) During claimant's employment, the employer's business was rapidly growing and there was a significant turnover of employees in both Seattle and in Portland. While the employer attempted to hire employees to replace those who left as rapidly as possible, it sometimes experienced delays in obtaining suitable replacements.

(4) During her employment, claimant perceived that customers sometimes were not pleased with the employer's products and services, which claimant attributed to the fact that they originated in Seattle, it took time for them to be delivered to Portland, mistakes were made in directing deliveries to particular customers and deliveries were often delayed. Claimant also thought that the customer service phone center in Seattle was not responsive to customers' needs and customers' complaints about the employer's products and services. As a result, the customers to whom claimant had initially sold the employer's products and services contacted claimant when they had problems, although dealing with these issues was not part of claimant's job. Claimant experienced frustration and stress about the employer's delays in hiring new employees, the employer's manner of conducting its operations and the employer's perceived lack of responsiveness to customers.

(5) On several occasions, claimant raised her concerns with her direct supervisor, who was responsible for repeat sales. Although claimant's supervisor worked out of the Seattle office, she periodically came to the Portland office to assess its operations. When claimant's supervisor was in Portland, while she listened to claimant's concerns and took notes, claimant did not think that she implemented the changes necessary to correct the shortcomings that claimant perceived. The supervisor told claimant that she should focus on selling the employer's products and services and that ongoing customer service was not in her area. However, claimant became increasingly concerned about the employer's business reputation and its ability to attract and maintain customers. Claimant several times asked her supervisor to create a position for her in Portland that would allow her to provide ongoing customer service for the employer's Portland customers. The supervisor told claimant that customer service responsibilities were already being handled in the Seattle. On at least one occasion, claimant spoke to the employer's owner about her concerns. Although the owner told claimant that he "appreciated [her] feedback," he also told claimant that she should just "focus on [making] sales." Transcript at 11.

(6) Sometime during claimant's employment, she brought up her concerns over how the employer provided customer service and the employer's shortcomings with the employer's human resources manager at lunch. In response to claimant's concerns over staffing, the manager told claimant that she was working on hiring people, including some for the Portland office, but it took some time for the employer to perform aspects of its pre-hiring process, including background checks, drug and alcohol tests, driving tests and physical tests. In response to claimant's concerns about errors or short-staffing that delayed the delivery of products, the manager explained the logistics of delivery to claimant and told claimant that she would raise her concerns with claimant's supervisor and the employer's owner. Afterward, the employer hired a quality assurance employee to ensure that delivery errors were not made, and worked to hire more delivery route drivers to shorten the delivery time to the customers of the Portland office and also to hire a new manager for the Portland office.

(7) On December 16, 2014, claimant went to an appointment with her primary care physician because she was feeling fatigued and overly emotional and thought that she might be having problems with her thyroid gland. Later, after testing, the physician could not find a physical condition to explain claimant's symptoms. The physician told claimant, stress might be adversely affecting her and referred her to a clinical psychologist for evaluation and treatment.

(8) Sometime between approximately March 22 and 26, 2015, claimant took a three day vacation with her son. Sometime during her time off, a customer to whom claimant had sold products and services,

called her on her cell phone. The customer was upset because he had a problem with obtaining some products from the employer and had been unable to reach anyone all day at the employer's customer service center because the phones were not being answered. Other customers also called claimant and made complaints to her. Claimant disliked being disturbed on vacation because the employer was not providing customer service to clients. Claimant returned to work early from her vacation to assist the customer who had been unable to reach anyone in the employer's customer service center.

(9) On March 27, 2015, claimant spoke to the customer she was assisting; the customer told her he was unhappy with the employer's services and it was claimant's "fault." Transcript at 6. The customer blamed claimant for misrepresenting the level of service that the employer provided when she sold him employer's products and services to him. Claimant had been trying all day to obtain the products that the customer wanted. On March 27, 2015, claimant sent a letter to the employer stating that she was resigning effective in two weeks, or on April 10, 2015.

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.

Although claimant referred on a few occasions during the hearing to the "stress" she experienced in the workplace, that is not a permanent or long-term impairment physical or mental impairment within the meaning of 29 CFR §1630.2(h). Transcript at 5, 7, 8, 14, 16. Nor was claimant's self-described "anxiety" sufficiently explained to support a conclusion that it was a long-term or permanent impairment. Transcript at 5, 7, 8, 14, 16. The same is true of claimant's thyroid condition. Transcript at 8. For these reasons, it is not appropriate to modify the standard for determining whether claimant had good cause to leave work to take account of these conditions. *See* OAR 471-030-0038(4).

Simply stated, claimant's various reasons for leaving work may be summarized as dissatisfaction with the manner in which the employer met its customer needs or organized its operations to meet those needs and the manner in which it addressed customer complaints. While claimant might have felt genuinely distressed by the employer's behavior toward its customers, she did not show that any grave harms resulted to her from it. She did not sufficiently describe the reduction in income that she attributed to the employer's lack of responsiveness to its customers to allow a determination that the amount of the reduction had reached a grave level. Transcript at 12. She did not sufficiently describe the stress and anxiety that she attributed to the employer's behavior to allow a conclusion that she was experiencing such symptoms so serious that she needed to leave work. The fact that the mental health professional to whom she was referred advised her to leave work tends to undercut any such conclusion. Transcript at 14. With respect to claimant's myriad of dissatisfactions with the employer's speed in hiring needed staff and the employer's lack of responsiveness to its customers, none of them as

described by claimant are of a sufficient magnitude to necessitate a decision to leave work. It is not unknown for employees to disagree with their employer's staffing decisions, the level of customer service that their employer provides or their employer's speed in solving operational problems and most do not perceive those shortcomings, viewed alone, as sufficient cause to leave work. A reasonable and prudent employee of normal sensitivities, exercising ordinary common sense, would not have concluded that she needed to leave work under the circumstances that claimant did and for the reasons that claimant did.

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

DECISION: Hearing Decision 15-UI-40966 is affirmed.

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

DATE of Service: August 18, 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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