

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0834

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #145552). Claimant filed a timely request for hearing. On July 1, 2015, ALJ Murdock conducted a hearing in which the employer did not participate, and on July 7, 2015, issued Hearing Decision 15-UI-41158, affirming the administrative decision. On July 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oak Street Medical employed claimant as a licensed practical nurse from April 28, 2014 to May 14, 2015.

(2) Claimant's job responsibilities included triaging telephone calls to the employer, a clinic, as well as providing support to two medical providers. Two other employees were also assigned to triage telephone calls. One of these employees was often absent, however, and at times, claimant was one of only two employees triaging telephone calls. Claimant's workload was heavy and stressful when one of the telephone triage employees was absent. She was often too busy to take rest or lunch breaks. The employer's human resources manager was aware that claimant was often unable to take her rest or lunch breaks.

(3) On March 5, 2015, claimant had an anxiety attack during a particularly stressful day at work. She had difficulty breathing and sought treatment from one of the employer's doctors.

(4) On April 8, 2015, claimant met with the human resources manager and asked to have another employee assigned to fill in when one of the telephone triage employee was absent. The human resources manager did not agree to claimant's request.

(5) On April 14, 2015, claimant had an appointment with a counselor for assistance in coping with the stress caused by her job.

(6) On April 20, 2015, one telephone triage employee was absent and another was assigned to patient care duties. Claimant was the only telephone triage employee working on that date and found it difficult, upsetting, and stressful to perform this work. On April 22, 2015, claimant met with the human resources manager and told the manager that she needed additional help because her workload was excessive. The human resources manager told claimant that the employer was working on a plan and that they would meet again in three weeks to discuss changes that would be made. Audio at 12:41.

(7) On Friday, April 24, 2015, claimant began to experience pain and swelling in her left leg. Claimant's condition worsened over the weekend. On April 26, 2015, she made a number of trips to an urgent care facility and a hospital emergency room and was told that she had a small blood clot in her leg. The blood clot had formed because claimant sat at her desk 8 to 10 hours a day at work.

(8) On May 1, 2015, claimant consulted her primary care physician, who told claimant that she needed to take some time off from work, elevate her foot, and use a standing work station at her job. Claimant's physician also diagnosed claimant with Raynaud's syndrome.

(9) On May 8, 2015, claimant gave the employer's human resources manager a prescription her physician had written for a standing work station; the employer had requested the prescription as proof that the work station was medically necessary. The manager told claimant that they were working on changes in her work situation. Audio at 25:55.

(10) Claimant concluded that the employer would do nothing to lessen her workload, that her work environment would continue to be stressful, and that her health would worsen. She talked to former employees, who told her that other employees had voluntarily left work for the employer because of the stressful working environment that the employer refused to address.

(11) Claimant decided to quit her job and on May 11, 2015, told the human resources manager that she was resigning, effective May 25, 2015. The human resources manager asked claimant to think about her decision.

(12) After claimant told the human resources manager she was resigning, two doctors and three registered nurses asked her to stay, telling her she was a valuable employee they did not want to lose. On May 14, 2014, claimant gave the human resources manager a letter in which claimant asked that she be permitted to rescind her resignation. Attached to the letter was a list claimant had prepared of 10 suggested changes in business practices that claimant believed "would make drastic improvements to morale and efficiency." Exhibit 1 at 6 and 7. Claimant had previously discussed these suggestions with the human resources manager, either in person or through emails.

(13) Also on May 14, 2015, claimant and two other employees met with the human resources manager to discuss claimant's request to rescind her resignation. The human resources manager told claimant that the employer would not allow her to rescind her resignation. The manager also told claimant that the employer had planned to lay off claimant as part of an effort to reduce staff, and that claimant was discharged, effective immediately.

(14) Had the employer permitted claimant to rescind her resignation, she would have pursued the suggested changes in the employer's business practices she made in her May 14 letter, and also pursued her request for a standing work station.

CONCLUSION AND REASONS: Claimant voluntarily left work without good cause on May 25, 2014. Claimant is eligible to receive benefits for the period May 10 through May 23, 2015 (weeks 19-15 and 20-015).

The employer discharged claimant on May 14, 2015, after claimant told the employer that she was quitting effective May 25, 2015, and after the employer refused to allow claimant to rescind her resignation. ORS 657.176(8) states that, when an individual has notified her employer that she will leave work on a specific date and the employer discharged the individual, not for misconduct, no more than 15 days before the planned leaving date, the work separation is adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred, except that the individual is eligible to receive benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. The employer discharged claimant 10 days before her planned leaving date. The reason the employer gave for discharging claimant – a desire to reduce staff – did not involve any willful or wantonly negligent violations of the employer's standards by claimant and did not constitute misconduct. Audio at 33:48. Because claimant's situation meets all of the requisites of ORS 657.176(8), we will disregard the employer's discharge of claimant and analyze her work separation as a voluntary leaving. To determine if claimant is disqualified from the receipt of benefits, we must decide if claimant had good cause for leaving work when she did. .

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 his employer for an additional period of time.

Claimant voluntarily left work because her excessive workload was causing her physical and emotional problems: she developed a blood clot because her job required that she remained seated for 8 to 10 hours a day, and sought counseling to because of the stressful nature of her work.¹ While claimant demonstrated that she faced a grave situation at her job, she failed to show that the situation was so grave that a reasonable and prudent person would have no alternative but to leave work.

¹ A claimant with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) who quits work 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 the employer for an additional period of time. The record fails to show that claimant's blood clot, Raynaud's syndrome or mental health issues constituted a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). As a result, we will analyze claimant's voluntary leaving under the general good cause standard in OAR 471-030-0038(4).

In regard to her physical problems, claimant had the reasonable alternative of pursuing her request for a standing work station which her doctor determined was medically necessary to alleviate the blood clot in her leg. Claimant presented no evidence that the employer had denied her request or was unwilling to grant it. In regard to her excessive and stressful workload, it is understandable that claimant was frustrated by the employer's general promises of improvements but failure to specify what those improvements would be. On April 22, 2015, however, the human resources manager told claimant that changes in the work environment were planned, and that she and claimant would meet again in three weeks, apparently to discuss these plans. Audio at 12:41. On May 8, 2015, the human resources manager again told claimant that changes in her work situation were planned. Claimant, who apparently was not hesitant about discussing her workplace concerns with the human resources manager, could have followed up on the manager's promises and continued to press for changes in the employer's business practices. Claimant's request to rescind her resignation and continue working for the employer indicate that she did not believe that efforts to improve her working conditions would have been completely futile; claimant testified that she "would have stayed and tried to make it better if they [the employer] would have let me." Audio at 40:55.

Claimant failed to show good cause for leaving work. Under ORS 657.176(8), she is not disqualified from the receipt of unemployment benefits based on this work separation for the period from May 10 through May 23, 2014 (weeks 19-15 and 20-15). Effective May 24, 2015, she is disqualified from the receipt of benefits under ORS 657.176(2) until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-41158 is affirmed.

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

DATE of Service: August 17, 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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