

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0872**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74004). Claimant filed a timely request for hearing. On June 17, 2015 and June 26, 2015, ALJ R. Davis conducted a hearing, and on June 30, 2015 issued Hearing Decision 15-UI-40917, modifying the Department's decision but still concluding claimant voluntarily left work without good cause. On July 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she offered information not presented during the hearing. Claimant failed to certify that she provided a copy of her argument and this new information to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant also failed to show that factors or circumstances beyond her reasonable control prevented her from offering the new information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider the new information that claimant presented. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Southwestern Oregon Publishing Company employed claimant from July 10, 2002 until March 23, 2015, last as a media consultant.

(2) Since at least 2009, claimant has experienced anxiety and depression. Sometime before July 2013, the employer promoted claimant from a sales position to interim sales manager. While claimant was sales manager, her depression and anxiety worsened. In July 2013, claimant was removed from the sales manager position and returned to a sales position. In September 2013, the employer hired a new sales manager, who supervised claimant in the sales position.

(3) On April 25, 2014 and May 19, 2014, the employer issued claimant warnings for, among other things, unsatisfactory work performance. On June 20, 2014, claimant received her yearly performance

review in which she received an “opportunity for improvement” rating. On December 16, 2014, the employer issued a written warning to claimant for unprofessional behavior.

(4) Because claimant had not received any warnings before April 25, 2014, she thought the new sales manager was trying “push [her] out of the company” and was unfairly issuing warnings to her. Transcript of June 17, 2015 Hearing (Transcript 1) at 22. Claimant disagreed with the new sales manager’s assessment that her performance was inadequate as set out in the warnings. Claimant also thought that the new sales manager was not performing his job satisfactorily since she knew the responsibilities of his position as a result of her experience as interim sales manager.

(5) In approximately November 2014, claimant was assigned to a new sales territory. Sometime before March 20, 2015, the sales manager adjusted claimant’s monthly sales goals downward to take account of her inability to meet those goals after transferring to the new territory. On Friday, March 20, 2015, the employer issued a written warning to claimant for unsatisfactory work performance because she had not met her monthly sales goals for four out of the past five months and she was not meeting the sales goal established for one of the employer’s new sales initiatives. During this meeting, claimant told the sales manager she disagreed with it, explaining that she had recently transferred to a new territory, that her sales goals were based on her prior year’s performance when she had exceeded the employer’s sales goals and that she had exceeded the goals established for the new sales initiative after it had been adjusted downward. Claimant also began to express her disagreements with the prior warnings that the employer had issued to her. At this juncture, the sales manager told claimant that she should write up her concerns and he would arrange for her to meet with him, the employer’s publisher and the employer’s human resources manager on Monday, March 23, 2015 to discuss these concerns. Claimant agreed to do so.

(6) On Monday, March 23, 2015, when the sales manager arrived at the workplace, he found that claimant had left a resignation letter, her work-issued cell phone and her company keys. The resignation letter was several pages long and detailed claimant’s dissatisfaction with the sales manager. The sales manager contacted the human resources representative, who was in route to the workplace, to tell her that, in light of claimant’s resignation, the meeting scheduled that day with claimant was cancelled. On March 23, 2015, claimant voluntarily left work.

**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 P2d 722 (2010). Based on claimant’s hearing testimony and a note from her physician, we assume for purposes of this decision that claimant had depression and anxiety, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). Transcript at 10; Exhibit 1 at 1. 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 impairment would have continued to work for her employer for an additional period of time.

Although it was quite clear that claimant thought the March 20, 2015 warning and the warnings issued prior to it were not merited, what was not clear was the reason that she decided to leave work when she did. While claimant testified that the March 20, 2015 warning was the “last straw” and that she “could not keep doing this,” she was unable to identify why this was so or cite any impacts that the warning had on her work life, her personal life or her symptoms of anxiety or depression. Transcript 1 at 10; Transcript of June 26, 2015 Hearing (Transcript 2) at 15. Claimant did not allude to any behavior by the sales manager or the employer that suggested ongoing abuse or an ongoing oppressive work environment that caused her to leave work. *See McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979). Although claimant asserted that she thought she was going to be discharged as a result of the March 20, 2015 warning, claimant did not have a realistic basis for this belief given the language of the warning and the sales manager’s apparently sincere testimony that he did not intend to discharge claimant at that time based on her performance. In addition, and as stated in the warning, the sales manager was going to review claimant’s performance on May 4, 2015 to determine the extent to which it had improved and the extent to which she was moving toward meeting the employer’s sales goals. Transcript 2 at 8; Exhibit 2 at 1. Claimant’s stated suspicion of an imminent discharge based on the sales manager’s alleged statement to her that the publisher and the human resources representative had been thinking about discharging her if her sales performance did not improve, and her stated belief that they were “case building” in anticipation of ultimately discharging her, also was not reasonable. The March 20, 2015 warning expressed no immediate intention to discharge claimant; instead, it merely specified the minimum time by which claimant needed to show some progress toward achieving the employer’s sales goals. On this evidence, the more likely inference that claimant should have drawn is that the employer might discharge if she did not improve her sales performance by May 4, 2015. Transcript 1 at 15, 25. There was no reasonable basis for claimant’s surmise that her discharge was imminent. Viewing claimant’s lengthy testimony as a whole, no grave reasons were discerned that might have compelled her to leave work when she did.

Even if claimant subjectively thought that the March 20, 2015 warning was unfair or contained unachievable sales goals, she had the option of continuing to work until at least May 4, 2015 and trying to realize them. As well, claimant had the further option of meeting with the sales manager, the publisher and the human resources representative on March 23, 2015 to attempt to have the sales goals reformulated and to raise any concerns she had with the past warnings that were issued to her. Claimant did not demonstrate that having such a discussion with the employer’s representatives was likely to be futile. On this record, a reasonable and prudent employee who was experiencing the minimal impacts of depression and anxiety that claimant was able to specifically describe would not have assumed she was going to be discharged before trying to achieve the sales objectives in the March 20, 2015 warning or would not have quit before meeting with the responsible members of management to attempt to have those objectives adjusted downward, to a level she thought was reasonable. Absent taking these steps, claimant did not show that on March 20, 2015 she had no reasonable alternative but to leave work.

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

**DECISION:** Hearing Decision 15-UI-40917 is affirmed.

Susan Rossiter and D. P. Hettle, *pro tempore*;

J. S. Cromwell, not participating.

**DATE of Service: August 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](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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