

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1019

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 18, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 155849). The employer filed a timely request for hearing. On August 4, 2015, ALJ S. Lee conducted a hearing, and on August 7, 2015 issued Hearing Decision 15-UI-42740, concluding claimant voluntarily left work without good cause. On August 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Brown Group Retail Inc. (dba Famous Footwear) employed claimant as a store manager from March 28, 2011 to April 30, 2015.

(2) On September 2, 2014, claimant returned to work after having been on medical leave since June 6, 2014. On October 8, 2014, a new district manager was transferred to claimant's district. Shortly after, claimant took two weeks of bereavement leave in October 2014 due to the death of her father. Claimant's doctor requested, and the employer approved, that claimant work no more than 40 hours per week for three weeks following her return to work in October 2014.

(3) Soon thereafter, claimant began working 50 or more hours per week. Claimant believed the new district manager mistreated her with regard to workload and the manner in which the manager spoke to claimant about her work performance. Claimant sent emails to the district manager complaining that her workload was unreasonable and asking for more employee hours to complete the work. Claimant sent copies of the emails to the district manager's supervisor, the regional manager. Claimant did not complain directly to the regional manager.

(4) Despite claimant's complaints, the district manager refused to approve additional employee work hours, but recommended claimant speak with other store managers to learn tools to improve employee productivity. Claimant did so, but did not consider their advice to be helpful because the store she managed was busier than other stores.

(5) On April 7, 2015, claimant's mother-in-law died. Claimant planned to travel to visit her family in California from April 8, 2015 until April 14, 2015. Claimant told the district manager her plans.

(6) On April 7, claimant was responsible for organizing the removal and subsequent restocking of a large amount of inventory. By the evening of April 7, when claimant planned to leave work, the restocking was not completed. The district manager arrived at claimant's store and saw the restocking was not complete, and told claimant they would be working throughout the night to restock. Transcript at 8. Claimant believed the manager expected her to work late that night. Claimant left work and left a telephone message for human resources asking if she was permitted to miss work as she had planned.

(7) On April 8, 2015, a human resources representative called claimant back and told her the employer approved her request for time off until April 14, 2015.

(8) On April 14, 2015, claimant returned to work and complained to a human resources representative about the district manager, alleging that the manager gave claimant an unreasonably large amount of work and spoke to her in a "demeaning" manner. Transcript at 11. After discussing the matter with the representative for two hours, the representative told claimant she would discuss claimant's complaint with her district manager. Claimant did not ask human resources about her complaint after April 14.

(9) On April 17, 2015, claimant gave the employer notice that she planned to quit work on April 30, 2015 because "nothing changed" regarding her district manager's behavior, and she had not received an update from human resources about her April 14 complaint. Transcript at 11.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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 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). For an individual with a permanent or long-term "physical or mental impairment," as defined at 29 CFR §1630.2(h),¹ good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have no reasonable alternative but to leave work. Both standards are objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010).

¹ 29 C.F.R. §1630.2(h) defines "physical or mental impairment" as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Although the record shows claimant took a medical leave of absence in 2014, and visited her doctor regularly during 2015 (Transcript at 14), the record does not show she had a history of a health condition before then, and the record fails to show that her condition continued after she quit work. Thus, assuming, *arguendo*, that claimant's medical condition was a "physical or mental impairment" as defined at 29 CFR §1630.2(h), the record fails to show that it was permanent or long-term. We therefore apply the "good cause" standard for a reasonable and prudent person of normal sensitivity, exercising ordinary common sense.

Claimant quit work because the district manager allegedly "harassed" her by making work demands claimant considered to be unreasonable, and by speaking to claimant in a "demeaning" manner regarding her performance managing and training employees in the store she managed. Transcript at 6. However, claimant failed to show that her situation was so grave that she had no reasonable alternative but to quit work. It is undisputed that claimant worked long hours as a store manager. However, despite the failure of claimant's district manager to reduce claimant's excessive workload when claimant complained to her, claimant failed to show she had no alternative but to quit work due to her workload. Claimant gave the employer notice she was quitting only three days after she complained to human resources, thus failing to give human resources sufficient time to address her concerns. Nor does the record show it would have been futile to await the employer's response to her complaint, because human resources told claimant it would discuss claimant's concerns with her district manager, and had responded immediately to claimant's concerns when she was dissatisfied with the district manager's behavior when claimant wanted to take time off due to her mother-in-law's death.

Claimant was also dissatisfied with the district manager's manner of speaking to claimant about her competence as a manager. As manager of claimant's district, the district manager had the right to discuss with claimant the performance and productivity of claimant and her staff, and claimant failed to show the manager's statements to her were inappropriate. Claimant did not allege or show that her manager used foul language, yelled at her, called her names, or threatened her. Moreover, although claimant was offended by the manager's manner of addressing workplace issues with her, claimant had the reasonable alternative of pursuing her April 14 complaint through human resources or higher levels of management. Claimant thus failed to establish that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant quit work without good cause. She is, therefore, disqualified from receiving unemployment insurance benefits based on her work separation.

DECISION: Hearing Decision 15-UI-42740 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: September 29, 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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