

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1109**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95613). Claimant filed a timely request for hearing. On August 26, 2015, ALJ Frank conducted a hearing at which the employer did not appear, and on September 2, 2015 issued Hearing Decision 15-UI-43796, affirming the Department's decision. On September 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Home Depot employed claimant as a lead generator from February 1, 2011 until June 22, 2015.

(2) As a lead generator, claimant sold roofing, siding, gutters and insulation. When claimant's employment began, he met the employer's sales targets. Each succeeding year, the employer substantially raised claimant's sales targets. Claimant worked as hard he was able, but he could keep pace with the sales targets only with great effort. Claimant began to experience serious stress and anxiety at work, which he attributed to ongoing pressure to increase his sales. Claimant had chest pains when he experienced anxiety at work.

(3) In May 2014, at a sales meeting, a member of the employer's management told claimant that his sales needed to increase. Claimant perceived that his job would be in jeopardy if was unable to increase his sales every year in line with the employer's sales targets.

(4) In October 2014, claimant told the store manager that he was experiencing stress, anxiety and chest pains as a result of the pressure on him to increase his sales. The store manager acknowledged claimant's statements, but made no suggestions about how claimant could reduce the stress and anxiety he felt over the pressure to increase his sales.

(5) In November 2014, at a sales meeting, a second member of the employer's management told claimant that his sales needed to increase. Also in November 2014, claimant met again with the store manager and told him that his anxiety symptoms were continuing to worsen and he was having a very hard time at work. Again, the store manager did not suggest any alternatives that might ease the pressure or anxiety that claimant experienced at work. At some point around this time, claimant spoke with the employer's human resources representative about the level of pressure and anxiety he felt at work as a result of the need to meet the employer's increasing sales targets for him. The representative did not offer any options for lessening the pressures that claimant felt. Also around this time, claimant spoke with a supervisor in the employer's hardware department about his inability to reduce the anxiety and stress he experienced from the employer's escalating sales targets. The hardware manager made no suggestions to claimant on how he might better deal with this situation or steps that the employer could take to assist him.

(6) By January 2015, claimant's stress level had continued to increase, as well as the anxiety and chest pains he experienced. In January 2015, a third member of the employer's management told claimant at a sales meeting that he needed to increase his sales and keep pace with the employer's sales targets. In January 2015, claimant had a physician evaluate the physical symptoms he was experiencing and the stress and pressure he felt at work since he was not able to relieve them on his own. The physician diagnosed claimant with an anxiety disorder and prescribed medication to treat it. Also in January 2015, claimant met with the store manager for a third time. He told the manager that he was not able to control the stress, anxiety and chest pains he was experiencing. Claimant asked the store manager if there were any less stressful positions in the store into which he could transfer. The store manager told claimant that there were no other positions for him. The store manager did not offer claimant any alternatives other than staying in his current position. After approximately January 2015, when claimant remained unable to control the stress that he was experiencing and its symptoms, he asked the store manager for training in the new products that the employer sold. Claimant thought that if he had the most current knowledge about new product lines introduced into the store, it would increase his efficiency and ability to generate new sales and also enhance his ability to achieve the employer's sales targets. Claimant never received the requested training.

(7) By June 2015, claimant thought his work had become unbearable. Audio at ~8:55. Claimant still was not able to control the pressure and stress he felt at work, and he had not been able to ameliorate it to levels that he thought were tolerable. On approximately June 13, 2015, claimant took a nine day vacation away from work. During that vacation, claimant concluded that he could no longer work as lead generator given his reactions to the stress and pressure that accompanied that position and the employer's indifferent attitude about assisting him in reducing them.

(8) On June 22, 2015, claimant reported to work after his vacation had ended. He went to the store manager's office to speak with him. When claimant reported for work, he did not intend to quit. Claimant again described to the store manager the stress, pressure and anxiety he experienced from his current position as a lead generator, his inability to control their effects and asked if the store manager could transfer him to another position. The store manager said that there was no position available for claimant other than as a lead generator. Claimant then asked the sales manager if he could take a leave of absence to determine if he could control or lessen his symptoms. In reply to the request, the store manager stated that it appeared to him that claimant needed to leave work. Audio at ~16:40. Given that

the store manager did not consider claimant's request for a new position and for a leave, but responded as he did, claimant decided to quit work. On June 22, 2015, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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). Claimant had been diagnosed with anxiety, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment 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 his employer for an additional period of time.

In Hearing Decision 15-UI-43796, the ALJ concluded that claimant did not establish good cause for leaving work when he did. The ALJ reasoned that the circumstances on June 22, 2015, as claimant described them, were insufficient to establish that he faced a grave situation on the day that he decided to leave work. Hearing Decision 15-UI-43796 at 3. Alternatively, even if claimant's circumstances were grave, the ALJ reasoned that claimant had reasonable options to leaving work when he did, such as directing his complaints to "corporate personnel," tendering to the employer a request for a workplace accommodation in view of his anxiety, or "accept[ing] the store manager's suggestion on June 22, 2015 and tak[ing] a leave of absence in lieu of resigning." Hearing Decision 15-UI-43796 at 3. We disagree.

The employer did not appear at the hearing, and claimant's testimony about the intolerability of the stress, anxiety and pressure he experienced at work was credible and not rebutted. There was nothing inherently implausible about what claimant's description of the stress and anxiety he was experiencing. Claimant's account of the ever-increasing sales targets that were assigned to him in each successive year tended to corroborate the increasing levels of claimant's emotional reactions, as well as did the statements made to him on three separate occasions by members of the employer's management that strongly suggested his job was in jeopardy if he did not continue achieving those sales goals. Although the ALJ reasoned that claimant did not show that grave circumstances motivated him to leave work on June 22, 2015 because he quit work immediately after he returned from a nine day vacation and did not show that any precipitating event occurred on that day, the evidence, as it exists in the record, is that claimant had been struggling with serious anxiety since at least October 2014. He raised with the store manager the level of impairment he was experiencing and his inability to control it on three separate occasions after October and did not receive any assistance, he asked the manager for a transfer to a less stressful position and the manager told him that there was none. He also approached both the employer's human resources representative and the hardware supervisor and still no assistance was forthcoming. When claimant returned to work on June 22, 2015, after having made all of these efforts and receiving, at best, indifferent responses from these many employer representatives, it was understandable that when the store manager again rejected his request of a transfer and also rejected his

request to take a leave of absence to try to resolve his symptoms,<sup>1</sup> that he would view those rejections as a sufficiently grave event to precipitate an immediate decision to leave work. This is particularly so when, as best can be inferred from this record, claimant made the decision over his recent vacation that he could not continue working in the job as lead generator because of the anxiety and stress he felt, and he would only be able to return if he was able to secure a different position or if he received authorization to take a leave to try to ease the symptoms he was experiencing as a lead generator. On June 22, 2015, a reasonable and prudent person in claimant's situation, experiencing the leave of stress, pressure and anxiety that claimant did, would have considered the store manager's negative response to his specific requests for ways to alleviate those symptoms, to be a grave circumstance.

There were no reasonable alternatives for claimant other than to leave work after the store manager turned down the options that claimant proposed on June 22, 2015. Claimant had already sought and received treatment from a physician and it did not alleviate his symptoms. Claimant had already spoken to the store manager on four separate occasions after October 2014, raised the debilitating nature of his symptoms and suggested steps that the employer might take in lieu of his leaving work and all of the suggested alternatives were rejected and the store manager did offer any options in addition to those which he had rejected. When assistance from the store manager was not forthcoming, claimant sought help from both the hardware supervisor and the employer's human resources representative, but none was offered to him. Although the ALJ noted that claimant could have sought assistance from other unspecified "corporate personnel," there is no evidence in the record about the corporate personnel to which he was referring, whether claimant was aware of the existence of them, or whether they could help him with a transfer or leave of absence that claimant's store manager did not support. In light of claimant's description at hearing about the decentralized nature of the employer's corporate administration, there is insufficient evidence in this record to show that making a complaint to hypothetical "corporate personnel" was a reasonable option that claimant should have pursued before deciding to quit.

Similarly, the ALJ's speculation that claimant should have sought a medical accommodation from the employer in lieu of quitting work is not well supported by this record as a reasonably available option to claimant. At the time claimant decided to quit, the store manager was well informed about claimant's condition and knew that he was receiving treatment from a physician, as were other management and the human resources representative assigned to claimant's store. Despite their knowledge and the responsibilities their positions presumably included, none of them raised the possibility of an accommodation to claimant and none suggested that they required some documentation from a physician to enable them to assist claimant. On the facts as they exist in this record, after the store manager had on several occasions denied claimant's requests for assistance and after the human resources representative also had offered nothing to claimant, claimant's conclusion that further attempts to obtain assistance from the employer would be met with futility was reasonable. For the reasons explained, a reasonable and prudent employee in claimant's situation would have concluded that he had no reasonable alternative to leaving work.

Claimant demonstrated that he faced a grave situation and he had not alternative to leaving work on June 22, 2015. Claimant is not disqualified from receiving unemployment insurance benefits.

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<sup>1</sup>While in Hearing Decision 15-UI-43796 at 3, the ALJ found that the store manager suggested on June 22, 2015 that claimant take a leave of absence, the ALJ's finding was incorrect. Claimant's hearing testimony was actually that he was the one who asked for the leave and the manager turned down the request. Audio at ~16:35, ~16:50, ~17:00.

**DECISION:** Hearing Decision 15-UI-43796 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

**DATE of Service: October 16, 2015**

**NOTE:** 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.

**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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