

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1198

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115621). Claimant filed a timely request for hearing. On September 25, 2015, ALJ Shoemake conducted a hearing, and on October 2, 2015 issued Hearing Decision 15-UI-45316, affirming the Department's decision. On October 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon Department of Justice employed claimant as child support case manager from August 11, 2008 until August 14, 2015.

(2) Claimant was diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) in childhood. As an adult, claimant was diagnosed with anxiety. Since at least 2014, claimant has received treatment and counseling for her ADHD.

(3) Beginning around April 2014, claimant perceived that the lead worker who supervised her was treating her unfairly and singling her out for harassment. Claimant thought that the work environment was hostile.

(4) Sometime before April 2015, claimant tried to be assigned to another lead worker. Claimant's attempts were unsuccessful. On April 15, 2015, claimant filed a formal complaint with the employer's human resources department alleging, among other things, that she was harassed and retaliated against by her lead worker, subjected to a hostile work environment and discriminated against because of a disability. Exhibit 2 at 37; Audio at ~30:32. After the complaint was filed, the employer initiated an investigation, ultimately interviewing claimant for six and one half hours, interviewing claimant's lead worker, the branch manager and other employees and arranging for an audit of claimant's work by other branches to determine if the lead worker's critiques of it were reasonable.

(5) By July 8, 2015, claimant had not received any updates on the status of the employer's investigation of her complaint and sent an email inquiring about it to the human resources analyst who had been assigned to investigate. On July 13, 2015, claimant met with the analyst to discuss the investigation. During their discussion, the human resources analyst stated that if claimant decided to leave work, the employer would not "contest" any claim for unemployment benefits she might make and the employer would give her a "good" recommendation. Audio at ~34:44. Claimant thought that if the employer did not contest her claimant for benefits, she would automatically receive benefits. Sometime later, claimant decided to resign because she thought she would receive benefits.

(6) On July 22, 2015, claimant submitted a resignation notice to the employer stating that her final day was going to be August 14, 2015. On July 23, 2015, the employer's human resources department sent a resignation agreement to claimant's union representative for claimant to sign. The union representative forwarded the agreement to claimant and advised claimant that her eligibility for unemployment benefits was not guaranteed if she resigned. Exhibit 2 at 46. On July 27, 2015, the employer communicated to claimant that she was not required to execute the resignation agreement. Audio at ~39:00.

(7) Sometime after July 23, 2015, claimant learned that even if the employer did not contest her claim for unemployment benefits, her receipt of them was not assured. Audio at ~37:47, ~38:05.

(8) On August 10, 2015, claimant notified the employer that she was rescinding her July 22, 2015 resignation. Exhibit 2 at 54. Claimant wanted to rescind her resignation because she was not guaranteed unemployment benefits if she resigned and if she had known that on July 22, 2015 she would not have resigned but "would have dealt with whatever I had to deal with to get through it" in order to continue receiving pay. Audio at ~38:48.

(9) On August 11, 2015, claimant met with on one of the employer's human resources analysts. The analyst told claimant that the employer would not allow her to rescind her resignation. Exhibit 2 at 55; Audio at ~39:59.

(10) On August 14, 2015, claimant voluntarily left work under the terms of her July 22, 2015 resignation.

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). Claimant had ADHD and anxiety, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). 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 impairments would have continued to work for his employer for an additional period of time.

Claimant testified that the motivating factor for submitting her July 22, 2015 resignation was her belief that she would receive unemployment benefits after she left work. Audio at ~35:35, ~36:40, ~37:47, ~38:04. Although she had ADHD and anxiety and thought that she was harassed by her lead, claimant candidly admitted that she would have continued to work under those conditions if she had known she might not be eligible for benefits. Audio at ~38:48. Claimant's health conditions (ADHD and anxiety) and the manner in which claimant perceived that the lead worker treated her were likely not grave conditions for which she had no reasonable alternative other than to leave work, given that she attempted to rescind her resignation, and to continue working for the employer, after she learned that her eligibility for benefits was not assured. Strengthening this conclusion was claimant's concession that her physician and treating therapist, who were aware of her mental health conditions and her perception of how her lead treated her had not advised her that she should quit work. Audio at ~29:38, Exhibit 2 at 8-25, 27-30. On this record, claimant did not meet her burden to show that grave reasons motivated her to leave work when she did and under the circumstances that she did.

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

DECISION: Hearing Decision 15-UI-45316 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: October 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. 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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