

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1261

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 73541). Claimant filed a timely request for hearing. On September 30, 2015, ALJ R. Frank conducted a hearing, and on October 5, 2015 issued Hearing Decision 15-UI-45370, affirming the Department's decision. On October 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Department of Human Services employed claimant as a social service assistant in its child services division from January 21, 2014 to July 17, 2015.

(2) Claimant was a victim of domestic violence. In June 2014 she took an intermittent leave of absence from work to address the effects of the domestic violence, including post-traumatic stress disorder (PTSD), depression and anxiety disorder. In January 2015, she took a second intermittent leave of absence for the same reason.

(3) Claimant's primary job duty was to collect children in foster care and transport them to visits with their biological parents, which claimant supervised. That duty exposed claimant to family situations involving domestic violence, child abuse and divorce, which exacerbated her PTSD, depression and anxiety disorder. Claimant requested a transfer, but was told that no transfer opportunities were available, and that she therefore would have to wait. Claimant also applied for other positions with the employer, but was not hired.

(4) By June 2015, claimant's work environment exacerbated her PTSD, depression and anxiety disorder to such an extent that she took a medical leave of absence from June 16 through 23, 2015. Claimant returned to work on June 24 and 25, 2015, but her PTSD, depression and anxiety disorder quickly worsened. On June 26, 2015, claimant took an indefinite medical leave of absence.

(5) On July 13, 2015, claimant's new psychotherapist informed her that her work environment was "toxic" for her, and that "now would be the time for [claimant] to make a graceful exit." Audio Record at 18:55-19:05. On July 16, 2015, the employer's human resources analyst encouraged claimant to quit work due to her mental health issues.

(6) On July 17, 2015, claimant quit work due to the effects of her work environment on her mental health.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit working for the employer with 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 suffered from PTSD, depression and anxiety disorder, permanent or long-term "physical or mental impairment[s]" 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 her employer for an additional period of time.

In Hearing Decision 15-UI-45370, the ALJ asserted that rather than quit, claimant instead could have sought further "adjustments" to her current position with the employer, "made a more concerted effort to secure a less stressful position," or "continued taking a leave of absence while committing herself to the course of treatment that she had only recently begun."¹ However, the record fails to show that the employer was willing and able to make any further adjustments to claimant's current position, let alone adjustments would have resolved claimant's mental health issues. Claimant testified that she made a concerted effort to secure a less stressful position with the employer, but was unsuccessful. Audio Record at 19:30-22:45. Claimant had taken multiple leaves of absence to address her mental health issues, and it is unlikely that continuing her leave of absence would have been any more successful. The course of treatment recommended by claimant's new psychotherapist included immediately quitting her job, and even the employer's human resources analyst encouraged claimant to quit. Under the circumstances, no reasonable and prudent person with claimant's mental impairments would have continued to work for her employer for an additional period of time.

Claimant quit work with good cause. She is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-45370 is set aside, as outlined above.²

¹ Hearing Decision 15-UI-45370 at 4.

² 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.

Susan Rossiter and J. S. Cromwell.

DATE of Service: November 16, 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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