

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1489

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 71728). Claimant filed a timely request for hearing. On November 24, 2015, ALJ Shoemake conducted a hearing, and on December 4, 2015, issued Hearing Decision 15-UI-48802, affirming the administrative decision. On December 12, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Software Solutions Unlimited employed claimant from September 7, 2010 until September 30, 2015, last as an auditor.

(2) In June 2015, the employer hired a consulting firm to study the employer's business and recommend cost saving measures. Claimant found the presence of the consulting firm to be very stressful, because she expected that the firm would recommend that the employer lay off employees. Claimant consulted her doctor, who diagnosed claimant with anxiety, prescribed medication to control this anxiety.

(3) During the week of September 21 through 26, 2015 and based on the recommendation of the consulting firm, the employer laid off 13-14 employees, approximately one-half of its workforce. Prior to these layoffs, claimant had worked for the employer as an assistant auditor. After the layoffs, the employer placed claimant in a position as an auditor. Claimant's job duties as an auditor were significantly greater and very different from the job duties she had performed as an assistant auditor.

(4) Claimant was provided no training for her new job as an auditor. She found her new job duties very difficult and stressful to perform. She was expected to interact directly with clients, work she had never done as an assistant auditor. Claimant was presented with client questions she could not answer, and client problems she could not resolve. When she asked for help from a more experienced auditor, the more experienced auditor was unable to assist her. Claimant did not ask for assistance from the employer's human resources department or her supervisor; human resources personnel were unfamiliar with claimant's job duties, and her supervisor and the human resources department were overwhelmed by the work involved in laying off employees and restructuring the company.

(5) The stress of claimant's new job as an auditor caused her vomit repeatedly during her work day. Because of this stress, claimant's doctor recommended that she find another job. On September 30, 2015, claimant voluntarily left her job with the employer because of the stress and anxiety her new work assignment was causing her.

CONCLUSION AND REASONS: We conclude that claimant voluntarily left work 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).

After a September 2015 corporate restructuring that involved the layoff of approximately one-half of the employer's workforce, the employer assigned claimant to a new job that required significantly more work than her previous position, and also required her to perform work she had never done before. The employer provided no training to help claimant learn her new job duties, and claimant was unable to obtain any assistance from more senior employees. As a result of the requirement she perform work for which she was not trained or qualified to perform, the anxiety with which claimant had been diagnosed in June 2015 worsened to the extent that claimant repeatedly vomited during her work day. Claimant therefore demonstrated that she faced a grave situation on account of the work the employer expected her to perform.¹

The ALJ, however, concluded that although claimant's work situation was grave, she "had the alternative of talking to human resources about her concerns and allow them the opportunity to try to resolve the matter for claimant." Hearing Decision 15-UI-48802 at 2. Claimant demonstrated, however, that the employer's human resources department was unable to help her; its personnel were overwhelmed with the work of restructuring the company. In addition, because the employer's human resources personnel were unfamiliar with her new job duties, they could not have provided any

¹ Because claimant was diagnosed with anxiety in June 2015, we do not find that this condition constituted a permanent or long-term physical or mental impairments as defined at 29 CFR §1630.2(h). Accordingly, we analyzed her decision to quit work under the general standard in OAR 471-030-0038(4), and not the special standard this rule provides for individuals with long-term physical or mental impairments.

meaningful assistance in help claimant more effectively perform them. A claimant is not required to explore futile alternative to demonstrate good cause for quitting a job. *Early v. Employment Department*, 274 Or App 321, 328, __ P3d __ (2015). Based on this record, we conclude that a reasonable and prudent person assigned job duties she was for which she had neither the training nor qualifications to perform, and which made her physically ill, would have no reasonable alternative but to voluntarily leave work.

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-48802 is set aside, as outlined above.²

Susan Rossiter and J. S. Cromwell

DATE of Service: January 8, 2016

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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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.