

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1500

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112108). Claimant filed a timely request for hearing. On October 6, 2015, ALJ Murdock conducted a hearing, and on October 8, 2015 issued Hearing Decision 15-UI-45593, affirming the Department's decision. On October 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On October 28, 2015, EAB issued Appeals Board Decision 2015-EAB-1220, reversing Hearing Decision 15-UI-45593 and remanding the matter to the Office of Administrative Hearings (OAH) for further proceedings. On November 23, 2015, ALJ Murdock conducted a hearing, and on December 1, 2015 issued Hearing Decision 15-UI-48548, re-affirming decision # 112108. On December 18, 2015, claimant filed a timely application for review with EAB.

EAB considered claimant's written argument to the extent it was relevant and based on the record.

FINDINGS OF FACT: (1) City of Eagle Point employed claimant from October 1, 2011 to July 30, 2015.

(2) Claimant did not get along with a particular coworker. Claimant reported to a previous supervisor and the employer's finance director that the coworker was bullying her by withholding information she needed to do her job, criticizing her in public, openly speaking about her mistakes, being rude, and using foul language and derogatory language toward her. On one occasion, the coworker told claimant to "fuck off." Transcript at 5. Claimant reacted to the coworker by ignoring her and others who associated with her, being rude to them and sometimes by slamming things down.

(3) Claimant's previous supervisor had experience with claimant's coworker. Although she was aware that the coworker made rude, demeaning, foul-mouthed and belittling comments, she was not allowed to discipline the coworker.

(4) Claimant and her coworker complained to the finance director about each other. The finance director determined that claimant and the coworker were like "oil and water." Transcript at 22. She did not believe that claimant was bullied, and did not take any steps to permanently prevent further issues between claimant and her coworker. She believed that claimant and her coworker would never get along with each other.

(5) The finance director offered claimant alternative work assignments that would sometimes allow claimant to work in areas away from the coworker she felt bullied her. That did not completely resolve the problem because some of claimant's duties required that she work in proximity to the coworker. Claimant asked to transfer to the police office, but was told that there was nowhere else for her to go except to remain in the job she held.

(6) Claimant did not file a grievance against her coworker. Claimant and her coworker were members of the same bargaining unit and therefore represented by the same union. The union representative told claimant that if she filed a grievance against her coworker, the union would have to represent the coworker's interests and not claimant's. Transcript at 36.

(7) Claimant grew increasingly distressed by her coworker's treatment of her. On July 8, 2015, the coworker told claimant to "kiss her ass." Transcript at 9. Claimant's supervisor was present at the time, and did not say anything to claimant's coworker about her comment to claimant. Claimant felt like she was going to have a nervous breakdown.

(8) On July 8, 2015, claimant went to her physician. The physician restricted claimant from working for three weeks due to stress. On July 16, 2015, claimant and the finance director had a meeting, during which the finance director "pretty much told me that things weren't going to change. And that if she doesn't hear [the coworker] say things like that to me then there's really nothing that she can do to correct the problem." Transcript at 11. On July 23, 2015, claimant met with a counselor.

(9) Claimant concluded that the employer would not resolve the problems with her coworker and decided not to return to work after her medical leave expired. Claimant voluntarily left work, effective July 30, 2015.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant had good cause for leaving work.

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 bipolar disorder, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant who quits work

must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.¹

Claimant quit work because a coworker subjected her to verbal abuse at work and she could no longer tolerate it. Claimant's coworker publicly criticized claimant, gossiped about her with other coworkers, told her to "fuck off," and told her to "kiss her ass." Some of those instances occurred in front of claimant's previous and most recent supervisors, neither of whom took any action to resolve the situation. The employer's finance manager decided that claimant and her coworker were "oil and water," did not get along, and that nothing would change between them, but did little to attempt to resolve the issues they had.

In Hearing Decision 15-UI-48548, the ALJ concluded that claimant did not show good cause to quit work because of her coworker, reasoning that claimant had the alternative to "avail herself of the options that the employer afforded her to . . . work through the conflicts . . . or to avoid working so closely with her coworkers," "file a union grievance," "complain to higher management," or attend more counseling. Hearing Decision 15-UI-48548 at 3. We disagree that those alternatives were reasonable.

It was not reasonable for claimant to work through the conflicts with her coworkers. While claimant might have participated more fully in the meetings the employer arranged between claimant and the coworker, the coworker refused to say anything during the meetings, making it unlikely that claimant's full participation in the meetings would have affected their relationship. Transcript at 40. The employer offered claimant some alternative assignments, but the employer's witness testified that even if claimant took those assignments "part of her position did require that she be in that area [near her coworker] to cover lunches and cover the front counter." Transcript at 24. An alternative assignment would not, therefore, have fully resolved the problems claimant experienced with her coworker. Claimant did not have the option to file a union grievance against her coworker; the union representative told her that if he filed such a grievance, he would have to represent the coworker's interests and not claimant's. Finally, complaining to "higher management" was not a reasonable alternative. The hearing record fails to identify which members of higher management claimant might have contacted to complain about her coworker, does not show that claimant knew or understood she had the option to complain to higher management, or that claimant knew how to do so. Nor does this record tend to show that such complaints would have been more effective than her complaints to her direct supervisors, who saw the coworker verbally abuse claimant and did nothing, or her complaints to the finance manager, who concluded that the problem between claimant and her coworker was mutual dislike and refused to believe claimant when she complained she had been bullied.

We conclude on this record that claimant was subjected to verbal abuse in the workplace when she was told to "fuck off" or "kiss" her coworker's "ass." Although claimant's supervisors witnessed some of the abusive behavior and heard claimant's complaints, the employer did not believe she had been bullied and was unwilling to take action that would effectively, permanently, address or resolve claimant's

¹ Claimant testified during the November 23rd hearing that she had been "deemed" bi-polar, but the record was not developed about claimant's diagnosis or the effect her health condition had on her decision to quit work. November 23, 2015 hearing, Audio Recording at 29:56. Therefore, we analyzed her decision to quit work using the standard of a reasonable and prudent person without impairment. Regardless of claimant's condition, our decision would remain the same for the reasons explained herein.

complaints about the working environment her coworker created. Claimants are not required to endure ongoing verbal abuse and hostility for fear that abandoning an oppressive situation will disqualify the worker from unemployment insurance benefits. *See e.g. McPherson v. Employment Div.*, 285 Or 541, 557, 591 P2d 1381 (1979). Claimant's working conditions affected her to the extent that she felt she might have a nervous breakdown and was medically restricted from working for three weeks due to stress. Claimant has established that she quit work for a grave reason and had no reasonable alternatives to quitting.

Claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-48548 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.