

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0066

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141712). Claimant filed a timely request for hearing. On December 14, 2015 and December 29, 2015, ALJ Seideman conducted a hearing, and on December 30, 2015 issued Hearing Decision 15-UI-50252, affirming the Department's decision. On January 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision to the extent it was relevant and based on the record.

FINDINGS OF FACT: (1) Asante Physician Partners employed claimant as a senior counselor from July 14, 2014 to October 15, 2015.

(2) Throughout claimant's employment, he and his coworkers formed difficult working relationships. Among other things, claimant perceived that his coworkers repeatedly shared inappropriate information about their personal lives while at work and disclosed confidential client information to each other in violation of the employer's policies and federal law, believed that he was subjected to disparate treatment in the workplace based on his gender, and was repeatedly admonished or coached by his manager for his part in disputes with coworkers without the manager ever having asked claimant to describe the disputes from his perspective.

(3) Claimant's coworkers also took issue with claimant's behavior. Some viewed claimant as insubordinate or perceived that he harassed them. Claimant's manager thought claimant made a lot of

little mistakes, but was resistant to directives and “progressively appeared to misinterpret coaching, and feedback, and correction as blaming and punitive.” December 29, 2015 hearing, Transcript at 98-99. On or about May 28, 2015, claimant’s supervisor told claimant that claimant was the “common denominator” in the office problems. Exhibit 20 at 29.

(4) Claimant repeatedly met with coworkers to try to resolve problems, but the relationships worsened. He repeatedly requested help from his manager and the director of operations, but perceived no changes. He consulted with a representative from the employer’s human resources (HR) department 13 times between March and October 2015, but the HR representative believed her role was to advocate and advise claimant, not address his complaints. The employer rejected claimant’s requests for a transfer, reduction in hours or permission to work from home.

(5) Claimant began to experience illness as a result of his work-related stress including anxiety, depression, tightness in his chest, nervousness, fear, irritability, sleeplessness, fatigue, reduced energy, feelings of hopelessness, muscle tension, diarrhea and upset stomach, and a significant increase in blood pressure. Claimant’s therapist and physician both recommended that claimant leave his job.

(6) Claimant felt his coworkers increasingly ignored him in the office. On September 2, 2015, claimant’s manager concluded that claimant had, wrongly, tried to “push” a “personal relationship” on a coworker; she never asked claimant for his version of the incident. Exhibit 20 at 12. She again stated that claimant was the “common denominator” in the office’s problems. Exhibit 20 at 11.

(7) On September 3, 2015, claimant asked the director of operations to meet with him as “my last attempt to address ongoing work issues before I feel that I would need to give notice and leave my position.” Exhibit 20 at 11. On September 15, 2015, claimant’s manager confirmed to claimant that she thought claimant was a “bad fit” for the office. Exhibit 20 at 9-10.

(8) On September 16, 2015, one of claimant’s coworkers accused claimant of being disrespectful. Claimant disagreed that he had been disrespectful, and thought his coworker misconstrued his behavior and that her response was disproportional to the event.

(9) On September 17, 2015, claimant’s manager orally reprimanded claimant in front of a coworker over a minor clerical matter. Claimant felt that his coworker should have reported the issue to him instead of to the manager, and felt that the manager should not have reprimanded him for a minor issue, and not in front of a coworker.

(10) On September 21, 2015, claimant reported to his manager that there had been an “incident” with a coworker, without providing the manager with a detailed account. Exhibit 20 at 7. On September 22, 2015, the manager replied to claimant that she had resolved the issue. Claimant was concerned because the manager did not first ask claimant about the incident or why he found it objectionable.

(11) On September 23, 2015, claimant reported his concern about the September 21 incident and another matter to the director of operations. On September 28, 2015, claimant forwarded staff meeting minutes to the director of operations with some commentary about contradictions between the employer’s break policy and his manager’s instructions. The director of operations instructed claimant to “manage your schedule and take breaks as has been outlined by” the manager. Exhibit 20 at 4.

(12) Later on September 28, 2015, claimant emailed the director of operations to ask for another meeting. Claimant wrote, “As you now know I have been struggling with issues in my office for over a year . . . The reality now for me is that tensions and hostilities have been fairly high since around May of this year, and tension in the office has only increased in the past couple of weeks. My physical and mental health continue to be negatively impacted to an extent that makes me question if I have the stamina or ability to persist in this setting for much longer . . .” Exhibit 20 at 3. They met on September 30th. Claimant had not observed any changes in his working environment or relationships with his coworkers as a result of his requests for assistance or his efforts to resolve things up to that point in time, and did not foresee that any assistance would be forthcoming in the future.

(13) On October 1, 2015, claimant notified the employer that he would resign in two weeks. Effective October 15, 2015, claimant quit work.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude 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).¹ The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period.

In Hearing Decision 15-UI-50252, the ALJ concluded that claimant quit work without good cause, reasoning that there was “no evidence of any harassment or bullying by the employer,” it was understandable that the employer did not read or consider claimant’s 69 page narrative about the complaints of harassment or bullying, and that claimant’s medical problems “were caused by his own demeanor and concerns.” Hearing Decision 15-UI-50252 at 3. We disagree. As a preliminary matter, claimant’s testimony and narrative included evidence of unfair treatment, much of which was unrefuted. In addition, the employer did not argue that they were justified in refusing to read it, they denied that claimant offered them his narrative, and there is no evidence that claimant caused his own medical problems.²

¹ Claimant had several physical ailments at the time he quit work, but, on this record, it appears that the ailments were temporary and situational rather than permanent or long-term in duration. We therefore analyzed claimant’s work separation using the standard of a reasonable and prudent person without impairment.

² The ALJ also concluded that claimant “could have tried harder to be reasonable and communicative and concentrate on the positive things, rather than continually document his negative thoughts.” Hearing Decision 15-UI-50252 at 3. There is no evidence on this record that the time claimant spent documenting concerning interactions with coworkers or problems at the office interfered with or took away from claimant’s efforts to resolve his concerns or regulate his own behavior at the office in order to, as the ALJ stated, “be reasonable and communicative.”

It is clear on this record that claimant and his coworkers had mutually poor working relationships and that claimant and his coworkers repeatedly complained about one another to the employer. Those issues were ongoing at the time claimant left work. However, this record fails to show that claimant was solely responsible for the poor relationships. Although the employer took seriously claimant's complaints about matters such as possible confidentiality violations, the record is similarly clear that the employer's managers were not convinced that claimant's complaints about his coworkers' behavior toward him were valid, and, at the time of the work separation, the employer did not intend to pursue a resolution to all of claimant's concerns.

In the end, claimant quit work because his working conditions were making him sick and his efforts to improve them had failed. Although it is unlikely that claimant was blameless insofar as his poor relationships with his coworkers were concerned, he made significant and good faith efforts to improve his relationships, asked for assistance, and tried to remove himself from the problems by requesting to transfer or reduce his work hours. On this record, all of claimant's efforts were rejected or failed, his final attempts to seek assistance from the director of operations were referred back to claimant's manager, who said to claimant that he was the "common denominator" in his coworkers' problems and was not a "good fit" for the office. In addition, claimant's manager made it clear that if claimant did not quit or change until he fit in with the office, he would be subject to discharge. Claimant's mental and physical health suffered to the extent that his physician and therapist both recommended he quit work.

The effect claimant's working conditions had on his health made continued employment a grave situation for claimant, and it appears that claimant exhausted reasonable, non-futile alternatives to quitting work. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working for the employer under the circumstances described. Claimant quit work with good cause. He is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 15-UI-50252 is set aside, as outlined above.³

Susan Rossiter and J. S. Cromwell

DATE of Service: February 10, 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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³ 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.