

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0068

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 11, 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 # 111036). Claimant filed a timely request for hearing. On January 8, 2016, ALJ S. Lee conducted a hearing, and on January 14, 2016 issued Hearing Decision 16-UI-51135, affirming the Department's decision. On January 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the parties' written arguments to the extent they were based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Beaverton School Employer 48J employed claimant as an elementary school teacher from August 1, 2005 to August 31, 2015.

(2) For the last two years of his employment, claimant taught at West Tualatin View Elementary School. At the end of the 2013-2014 school year, claimant was given a performance evaluation by the school principal. In the evaluation, the principal rated claimant's performance as unsatisfactory with respect to professional growth goals. Claimant complained to the school human resources representative, who persuaded the principal to change claimant's rating to proficient. However, claimant was placed on a professional growth plan.

(3) In December 2014, before winter break, the principal and the human resources representative told claimant he was on track in meeting his professional growth goals. After claimant returned to work in January 2015, however, the principal expressed concern about claimant's teaching performance after she observed his classroom. The principal felt claimant lacked classroom management and control, seemed unprepared, and presented the materials poorly. In February 2015, the principal began formal weekly

observations of claimant's class, and asked claimant to meet with her after her observations for feedback. Claimant found these meetings long and frustrating, because he felt the principal was being hypercritical and unfair.

(4) After receiving feedback, claimant made efforts to comply with the principal's suggestions and requests. Claimant felt the principal failed to recognize the efforts he was making to address her concerns. He attempted to submit evidence of his attempts to meet her requirements, but she refused to consider them.

(5) After six weeks of observations, claimant requested assistance from his union representatives. Claimant asked to have a third party, objective observer for his class performance and the meetings. Claimant believed this would alleviate what he felt was the principal's unfair bias against his performance. The human resources representative sat in on some meetings, but the principal's behavior did not change.

(6) Claimant consulted with his union representatives regarding the weekly observations and long feedback meetings. On their advice, claimant stopped attending the feedback sessions because he found them so stressful that he was experiencing panic attacks, migraines, tremors and vomiting. The principal responded by continuing to perform weekly classroom observations with written evaluations. Claimant continued experiencing panic attacks, migraines, tremors and vomiting.

(7) Claimant filed a written request with the employer to transfer to a different school within the school employer, but his request was not approved. Claimant had been seeing a counselor regarding his stress from the situation, and was referred to a specialized counselor who diagnosed him with post-traumatic stress disorder (PTSD).

(8) In late March 2015, the principal notified claimant that she intended to submit a letter of concern to the employer regarding claimant's performance. Claimant objected because he was concerned about the impact that would have on his career. Claimant's union representatives told him his only option was to file a complaint with the employer's superintendent, but that doing so would jeopardize his career as a teacher. Claimant therefore did not file a complaint with the superintendent.

(9) Starting April 2, 2015, claimant took a medical leave of absence. Claimant's doctor diagnosed him with severe anxiety disorder. Claimant remained on medical leave for the remainder of the school year. After exhausting his protected leave, claimant continued on unpaid leave. He applied for short-term and long-term disability, but was denied both. All three of claimant's health care providers attributed claimant's mental health issues to his work environment.

(10) On July 22, 2015, claimant contacted the employer regarding his assignment for the following year. The employer notified claimant that his transfer to a different school still had not been approved. The principal did not support the transfer, because it was not customary not to transfer employees that were having performance issues.

(11) On August 11, 2015, the employer's risk manager contacted claimant about possibly filing for accommodations under the Americans with Disabilities Act (ADA). However, he informed claimant

that the employer would not interfere with the principal's observations and evaluation process. Claimant therefore declined to apply for ADA accommodations.

(12) Claimant quit work because of mental health issues resulting from the principal's supervision, observations and evaluation process.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause to quit working for the employer.

A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting 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 quit work. OAR 471-030-0038(4) (August 3, 2011). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for quitting work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would quit. *Id.* Both standards are objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). 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.

In Hearing Decision 16-UI-51135, the ALJ concluded that although the mental health issues claimant experienced as a result of the principal's supervision, observations and evaluation process were "serious," claimant quit work without good cause because a reasonable and prudent person instead would have requested ADA accommodations, filed a grievance, or "push[ed] forward" with his transfer request.¹ However, the record shows that although the employer's risk manager contacted claimant about the possibility of filing for ADA accommodations, he specifically told claimant that the employer would not interfere with the principal's observations and evaluation process. Transcript at 20. The record fails to show claimant could have filed a "grievance" other than a complaint to the employer's superintendent, which claimant reasonably believed would jeopardize his career as a teacher. "Pushing forward" with his transfer request likely would have been unsuccessful given the employer's ongoing failure to grant, and the principal's refusal to support, the request. Claimant therefore had no reasonable alternative but to quit work due to the serious mental health issues resulting from the principal's supervision, observations and evaluation process.

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

DECISION: Hearing Decision 16-UI-51135 is set aside, as outlined above.²

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, not participating.

¹ Hearing Decision 16-UI-51135 at 5.

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.

DATE of Service: February 17, 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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