

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0075

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113258). Claimant filed a timely request for hearing. On January 11, 2016, ALJ Holmes-Swanson conducted a hearing, and on January 14, 2016 issued Hearing Decision 16-UI-51118, affirming the Department's decision. On January 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the entire hearing record and claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Gerding Companies, Inc. employed claimant from March 7, 2014 to November 16, 2015, last as a project accountant.

(2) Most of claimant's job duties required her to input data into specialized accounting software. Claimant's work was not always password-protected from all her coworkers. Since claimant began her employment, she experienced problems with financial documents being removed from her mail, only to be returned to her mail months later, and with changes having been made to information she had entered into her accounting software. Claimant's supervisor experienced the same problems when he began working for the employer. Claimant did not have sufficient access to the computer to determine who made the changes, or when the changes were made. Claimant and her coworker, JH¹, did not get along, and claimant suspected JH took the financial documents and logged into the computer as claimant to enter incorrect data to make it appear as though claimant was incompetent. Transcript at 17. During

¹ "JH" is a pseudonym.

2014, claimant noticed that another coworker, KB², had joined JH in behaving in a hostile manner toward claimant.

(3) In January 2015, claimant told her supervisor about her suspicions that JH and KB were trying to deliberately change her work. The supervisor perceived the matter as a “personality conflict” and did not discuss the situation with JH or KB. Transcript at 47.

(4) In May 2015, claimant met with her supervisor and the employer’s owner and complained about how JH behaved toward her at work. The owner said he would discuss the matter with JH, but the situation did not improve.

(5) In September 30, 2015, claimant began receiving psychotherapy once or twice weekly to treat feelings of depression and anxiety she had experienced since the problems began at work, including crying and suicidal thoughts. Claimant’s psychotherapist diagnosed claimant as having anxiety and depression, and determined that claimant’s working conditions were causing her symptoms. He recommended to claimant that she leave work with the employer to preserve her mental health. Exhibit 1, Bernstein Letter.

(6) On October 5, 2015, claimant complained to her supervisor that she was being “bullied” by JH. On October 8, 2015, claimant requested a meeting with her supervisor and the employer’s owner and complained that she was being bullied and that claimant’s supervisor had not addressed the problem. The employer was unable to find evidence, other than claimant’s allegations, that claimant’s coworkers had mistreated her or sabotaged her work.

(7) On October 9, 2015, claimant began a week of vacation. While claimant was on vacation, JH resigned due to a change in her work duties resulting from restructuring in the company. When claimant returned to work on October 15, 2015, she told her supervisor she was dissatisfied that the employer had not addressed claimant’s complaints with JH before JH left work, or with KB. Claimant complained that KB would continue to mistreat her. The supervisor told claimant that KB would “probably stop” because JH was the “leading influence.” Transcript at 13.

(8) Due to the restructuring, the employer modified some of claimant’s job duties, moved claimant’s work station near KB’s work station and assigned KB to train claimant in some of her new duties. Claimant also learned that her password had become accessible to JH and KB before JH left work.

(9) On October 20, 2015, claimant found unusual computer entries she had not put into the accounting program. One entry was a large bill for a mobile office. Claimant’s supervisor told claimant the entries might have been the result of a new employee’s work. The new employee denied having entered anything into claimant’s software.

(10) On or about October 25, 2015, claimant was instructed to change some dates entered on a project and, after doing so, she printed a copy of her changes. The next day, the owner, the vice president and claimant’s supervisor looked at the dates during a project status meeting. Claimant was upset and “shaken” to learn that, at the time of the meeting, the dates no longer matched what she had entered into

² “KB” is a pseudonym.

the computer and printed. Transcript at 21. On another occasion, claimant and KB were working late, and as claimant entered information into her computer program, she noticed three prior entries she had just completed had been changed.

(11) Claimant was upset when KB recommended to claimant's supervisor during meetings on October 26 and November 2, 2015 that the employer offer some of claimant's work to the former employee, JH.

(12) On November 6, 2015, claimant received invoices in her mail that were three months old. Claimant believed KB had intentionally taken the invoices three months before to disrupt claimant's work.

(13) During a meeting on November 9, 2015, KB looked directly at claimant while proposing to the supervisor again that the employer hire JH to perform some of claimant's work using claimant's computer. Claimant was upset and shaking after the meeting. She complained to her supervisor that she felt as though KB was "threatening" her during the last three meetings by stating she would give some of claimant's work to JH. Transcript at 43-44.

(14) Claimant complained to the vice president about KB recommending that the employer contract out claimant's work to JH. The vice president told the supervisor that he was in charge of KB, and needed to take care of the situation and tell KB she was not permitted to take work to an ex-employee like JH. Claimant then told her supervisor that KB was violating the employer's anti-harassment policy and asked if he would provide anti-harassment training at the next meeting. The supervisor responded, "So what? People sign these handbooks all day long and turn around and violate [them]. It doesn't mean anything." Transcript at 10. At that time, claimant concluded the employer would not address her complaints about bullying with KB.

(15) After the November 9 meeting, claimant met with her psychotherapist, who recommended again that she quit work due to the effects of her working conditions on her health. On November 16, 2015, claimant quit work to preserve her health.

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). The standard for showing good cause is modified for a claimant who has a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with such impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

In Hearing Decision 16-UI-51118 the ALJ concluded that, although claimant was seeking mental health treatment, the balance of the evidence did not show she had a permanent or long-term mental

impairment.³ We disagree. Based on claimant's testimony relating her mental health problems to the problems she experienced since she began working for the employer, it is reasonable to presume that her mental health symptoms began before she first complained to the employer about her coworkers in January 2015. Moreover, claimant's husband testified at hearing that claimant had been depressed on a daily basis, and he was relieved she began counseling. Transcript at 62. Thus, we conclude it is more likely than not that claimant's mental impairment was long-term, and we apply the modified standard for a claimant who has depression and anxiety when evaluating whether she had good cause to quit. To show good cause to leave work when she did, claimant must establish by a preponderance of the evidence that no reasonable and prudent person with the characteristics and qualities of an individual with anxiety and depression would have continued to work for her employer for an additional period of time.

The ALJ also concluded that claimant quit work without good cause because she did not establish her working conditions presented a grave situation.⁴ The ALJ reasoned that, although claimant faced a work situation that was "plagued with problems," the preponderance of the evidence did not show claimant's "difficult" work situation was due to harassment by other employees.⁵

We disagree and conclude claimant's situation was grave. We are persuaded that it was more likely than not that claimant's coworkers were mistreating claimant at work. Claimant's supervisor told claimant KB would "probably stop" mistreating her once JH left work, and had himself experienced inexplicable changes to his work when he was a new employee. However, even if some of the problems claimant encountered were not attributable to claimant's coworkers, the record shows claimant's working conditions were causing her to experience symptoms of anxiety and depression, including thoughts of suicide. Claimant described herself as feeling "broken," "shaken," "raw," and "hopeless" from what she experienced at work. Transcript at 10, 21, 32. Her testimony was confirmed by evidence from her psychotherapist. *See* Exhibit 1. Claimant's supervisor, too, described claimant as being "visibly upset" when she complained about bullying by her coworkers. Transcript at 55-56.

Having determined that claimant did not face a grave situation, the ALJ did not conclude what, if any, reasonable alternatives claimant had to quitting. We conclude it would have been futile for claimant to explore additional alternatives to quitting. The record shows claimant tried and failed for ten months to resolve her concerns regarding coworkers trying to deliberately destroy her work. She repeatedly attempted to reach a solution through her supervisor. However, the incidents that initially sparked her concerns continued even after JH quit. When claimant did not find resolution through her supervisor, she initiated meetings with the owner and vice president. There is no evidence the owner did anything to address claimant's concerns. To the contrary, despite claimant's concerns, the employer increased claimant's contact with KB by moving claimant's desk near KB's desk, and having KB begin training claimant. When claimant complained to the vice president that KB had recommended claimant's work be reassigned, the vice president redirected responsibility for resolving claimant's concerns back to claimant's supervisor, who dismissed claimant's concerns about harassment at work and rebuffed her request for anti-harassment training. There is no evidence to show the employer ever discussed

³ Hearing Decision 16-UI-51118 at 3.

⁴ *Id.* at 16-UI-51118 at 4.

⁵ *Id.*

claimant's concerns with JH or KB. To a reasonable and prudent person with anxiety at depression, further attempts at resolving the conditions that were causing her depression and anxiety would have appeared futile at the time claimant quit.

Nor is there evidence to show that additional treatment or a leave of absence was a reasonable alternative to leaving work. Claimant's mental health care provider recommended claimant quit work because her working conditions were detrimental to her health. The record does not show additional treatment or time away from work would change claimant's working conditions. A reasonable and prudent person in claimant's situation would not have continued her employment where there was no reason to believe the working conditions that were affecting her health would change.

Because claimant faced a situation so grave that she had no reasonable alternative but to leave work, claimant left work with good cause.

DECISION: Hearing Decision 16-UI-51118 is set aside, as outlined above.⁶

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

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

⁶ 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.