

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0174**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 18, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 75342). Claimant filed a timely request for hearing. On January 28, 2016, ALJ S. Lee conducted a hearing, and on February 4, 2016 issued Hearing Decision 16-UI-52386, affirming the Department's decision. On February 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Assisted Living Concepts employed claimant as an executive director of one of its assisted living facilities from March 25, 2012 to November 8, 2015.

(2) In 2015, claimant experienced increased workplace stress related to a regional staffing change, the employer's implementation of new policies, understaffing, the employer's decision to discharge claimant's marketing person, and claimant's need for additional training. The employer did not respond to claimant's request for training and assistance.

(3) On September 11, 2015, the employer gave claimant a written warning for performance deficiencies that were directly related to claimant's problems with understaffing and lack of training. The warning called for claimant to participate in weekly calls with the regional director, who was also to help claimant develop business plans. The regional manager did not participate in weekly calls with claimant or help her develop business plans. Claimant again requested training and did not receive it.

(4) In October 2015, the only registered nurse employed by the facility claimant managed quit her job. The employer expected claimant to take over some of the nurse's duties, including performing nursing assessments, but claimant lacked the training necessary to do assessments.

(5) On October 5, 2015, claimant sought medical care from her nurse practitioner because of the stress and anxiety she felt related to work. The nurse practitioner diagnosed claimant with depression and anxiety, prescribed medication, and ordered her to refrain from working from October 6, 2015 to October 11, 2015 to let the medication take effect.

(6) Also on October 5, 2015, claimant asked the employer for Family Medical Leave Act (FMLA) paperwork. The employer agreed to send paperwork to her. Claimant never received it.

(7) On October 12, 2015, claimant returned to her nurse practitioner for additional medical care. The nurse practitioner adjusted claimant's medications and referred her to counseling and ordered her off work on October 12, 2015 and October 13, 2015.

(8) On October 22, 2015, claimant's regional director presented claimant with another warning in the form of a 60-day plan that set forth numerous requirements for claimant to meet. Claimant felt the expectations and timelines were unrealistic.

(9) On October 23, 2015, claimant gave the employer notice of her intent to resign, effective on November 21, 2015, 30 days later. Claimant's resignation letter stated, in pertinent part:

I have reached out countless times, since April 2015, to regional Managers for help and was treated as if my Community and staffing problems didn't matter to them.

Due to the lack of support and communication from upper management it has created excessive stress and has taken its toll on me causing Health problems. I love my job but the stress of the job and my Health problems I am forced to turn in my 30 day notice after 3 ½ years of working for the company.<sup>1</sup>

(10) On October 26, 2015, the regional manager responded to claimant's resignation stating she was "surprised" because claimant had said she was "all in," but respected claimant's decision.<sup>2</sup> The regional manager did not address claimant's complaints or suggest alternatives to quitting.

(11) On November 2, 2015, claimant again sought medical care from her nurse practitioner. Claimant's nurse practitioner ordered claimant to refrain from returning to the workplace through the effective date of her resignation.

(12) Claimant sought to use paid accrued leave to cover her absences. On November 6, 2015, the employer's human resources director sent claimant an email in which he stated he had been working with the regional manager on claimant's resignation and November 2<sup>nd</sup> doctor's note. The human resources director's email did not address any of the complaints claimant mentioned in her resignation or suggest that alternatives to quitting work were available. Instead, he informed claimant that she was not allowed to use paid leave during her notice period and gave her the option to take unpaid leave and

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<sup>1</sup> Exhibit 2.

<sup>2</sup> *Id.*

resign on November 21<sup>st</sup> as planned, or agree to resign effective November 5, 2015 and receive pay through the end of her planned notice period.

(13) On November 8, 2015, claimant signed a separation agreement with the employer making her resignation effective November 5, 2015. Claimant's health improved after leaving work.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude claimant 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).<sup>3</sup> "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).<sup>4</sup> 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 her employer for an additional period of time.

The ALJ concluded that claimant quit work without good cause. Although the ALJ stated, in essence, that claimant had credibly testified that her work related stress and anxiety were making her so sick she could not work, she characterized claimant's working conditions as "frustrating and annoying," which, she reasoned, was not a grave situation because "[m]any people continue to perform their jobs despite differences of opinion or feelings of frustration with their superiors."<sup>5</sup> In support of her conclusion that claimant's health did not present her with a grave situation, the ALJ also specifically stated that claimant's nurse practitioner "did not recommend that claimant leave her position," and "[i]n fact, [] released her back to work several times."<sup>6</sup> The ALJ concluded that claimant had several reasonable alternatives to quitting work, including continuing to work for the employer while trying to meet expectations and seeking assistance or filing for FMLA leave "while she attempted to address her serious health issues."<sup>7</sup> In sum, the ALJ wrote, "Claimant's personal reasons for leaving work, such as not wanting to continue in a very stressful environment because she felt she was about to have a nervous breakdown, may have been compelling to her but do not constitute good cause to leave employment in the context of qualifying for unemployment benefits."<sup>8</sup>

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<sup>3</sup> Claimant planned to quit work effective November 21<sup>st</sup>, and accelerated her quit date to November 8<sup>th</sup> pursuant to an agreement with the employer. ORS 657.176(6), which applies to cases in which an individual leaves work without good cause no more than 15 days prior to a planned voluntary leaving with good cause, does not apply to this case because, for the reasons explained, claimant had good cause for quitting on November 8<sup>th</sup>.

<sup>4</sup> We decided this case using the standard of a reasonable and prudent person without impairment because claimant's anxiety and depression appear to be situational rather than permanent or long-term. For the reasons explained in this decision, however, the outcome of this decision would remain the same regardless which standard we applied.

<sup>5</sup> Hearing Decision 16-UI-52386 at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

We agree with the ALJ that claimant credibly testified and established that the work-related stress and anxiety she felt was making her so sick that feared she might have a nervous breakdown, she was diagnosed with depression and anxiety, prescribed medication, and, three times during her last month of employment, she was so sick that her nurse practitioner ordered her off work. Although claimant's nurse practitioner did not recommend claimant quit work before claimant submitted her resignation, the relevant period in a quit case is not the date claimant gave notice of her intent to resign, it is the date claimant actually quit work. In this case, approximately a week after claimant submitted notice of her resignation the nurse practitioner ordered her to refrain from returning to the workplace for the remainder of her notice period. Therefore, by the time claimant quit work, her nurse practitioner had, effectively, endorsed claimant's decision to leave her job. The effect claimant's working conditions had on her health amounted to a grave situation.

Claimant did not have reasonable alternatives to quitting work. Claimant's working conditions were making her sick. By the time claimant quit, she had tried for approximately six months to meet the employer's expectations and get assistance, but all of her efforts failed. Moreover, when claimant notified the employer that she was quitting work due to the lack of help, support and communication she received from management, the regional manager and human resources director did not acknowledge her concerns or suggest that there were any alternatives to quitting work, and none were apparent to claimant. It was not reasonable to expect claimant to continue working an additional period of time in a work environment that was making her sick. Nor was it reasonable to expect claimant to continue working while pursuing FMLA leave. Claimant had requested FMLA paperwork from the employer, but the employer failed to provide it to her. Meanwhile, her health was deteriorating to such a degree that her physician repeatedly ordered her to refrain from working, and the problems that were causing claimant's depression and anxiety, specifically, understaffing, a lack of training, and unreasonably short timelines to meet the employer's expectations, were unlikely to improve or resolve themselves simply because claimant took a leave of absence from the workplace.

A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would conclude she had no reasonable alternative but to quit work when faced with such extreme stress and anxiety that she felt she was going to have a nervous breakdown and had a lack of reasonable alternatives to quitting work. Although the ALJ correctly stated that claimant "did not improve her finances by reducing her income to zero," claimant did not quit work because of her finances, she quit work because of her health, and the unrefuted evidence in this record is that claimant's health improved as a result of her voluntary leaving.

For those reasons, we conclude that claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-52386 is set aside, as outlined above.

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

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<sup>8</sup> *Id.*

**DATE of Service: March 3, 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](http://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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