

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0203

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 171802). Claimant filed a timely request for hearing. On January 27, 2016, ALJ Wyatt conducted a hearing, and on February 4, 2016 issued Hearing Decision 16-UI-52374, reversing the Department's decision. On February 24, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted two different written arguments to EAB that were dated February 24, 2016. EAB considered both arguments when reaching this decision.

FINDINGS OF FACT: (1) Medical Teams International employed claimant from August 25, 1997 until October 29, 2015, last as an international volunteer recruiter.

(2) In 1993, claimant had a grand mal seizure that was attributed to stress and fatigue.

(3) In January 2015, the employer reorganized its departments and was in the process of establishing a new department. As a result, the employer assigned to claimant the recruitment responsibilities of four program coordinators in addition to her existing responsibilities. Claimant also assumed additional new duties relating to the employer's establishment of a new department. After these changes, claimant's workload increased substantially as did the work-related stress and pressure she experienced.

(4) By March 2015, claimant was experiencing anxiety, heart palpitations, dizziness and "emotional imbalance" in the workplace, which she attributed to the stress and pressure that resulted from her increased workload. Transcript at 13, 22. In March 2015, claimant went to her doctor and a mental health counselor for assistance in controlling her symptoms. Claimant started regular counseling sessions with the counselor. Neither provider was successful in easing claimant's reactions to the workplace. As time passed, the pressure that claimant felt continued to increase and her physical reactions to it intensified. Claimant's counselor began talking with claimant about whether she needed

to leave work to escape the pressures and its impact on her health. Claimant resisted this suggestion because she was committed to the employer's mission.

(5) Sometime in April or May 2015, claimant spoke to her supervisor about the overwhelming nature of the workload she had been assigned beginning in January 2015. The supervisor hired a new employee in May 2015 to handle some claimant's easier tasks, and the supervisor shifted a few recruitment responsibilities from claimant to herself. However, new tasks continued being assigned to claimant and these measures did not reduce claimant's workload or the symptoms that claimant experienced.

(6) By July 2015, claimant's symptoms were continuing unabated and she believed she needed to remove herself from the workplace to restore her health. Claimant had become concerned that the stress and anxiety she was experiencing would trigger a seizure of the type she experienced in 1993. Sometime in July 2015, claimant visited her doctor. The doctor agreed that claimant needed to be away from the workplace and completed the necessary forms to authorize a leave from work under the Family Medical Leave Act (FMLA). The doctor's authorization stated that claimant needed a "period of rest," followed by treatment that would be later determined. Exhibit 2 at 7. Claimant's mental health counselor concurred. Claimant spoke with the employer's human resources department about taking a leave, described her work situation and her physical and emotional reactions to it. Claimant did not mention her symptoms to her supervisor because she did not want to disclose how her workload had affected her emotionally and physically. The employer authorized a FMLA leave for claimant from July 24, 2015 until September 2, 2015.

(7) After her leave began on July 24, 2015, claimant was initially exhausted and then became able to function better. Claimant kept regular appointments with her mental health counselor while she was on leave. Since claimant wanted to remain working for the employer, during this time she looked for other positions in the employer's organization that might be less stressful for her. No positions were available. Claimant's doctor extended the length of the leave she recommended for claimant until October 5, 2015, stating that claimant required "additional time to improve her health." Exhibit 2 at 10. The employer authorized an extension of claimant's leave until October 5, 2015.

(8) On October 5, 2015, claimant returned to work. Claimant's doctor released her to work 16 hours during the week of October 5 through 11, 2015 and to work 32 hours during the period of October 12 through November 2, 2015. Almost immediately after claimant began working again, all of her physical and emotional reactions to the workplace returned at the same level they had been before she went on leave, even though she was working only two days per week. After she returned, claimant attended workplace meetings and observed that, during the over two months she was away on leave, the employer had not taken steps that might have reduced her workload. Claimant concluded it was unlikely that her health would allow her to remain at work given that the workplace pressures and expectations remained what they had been before she went leave and her symptoms had returned with full force. Claimant saw her mental health counselor and the counselor recommended that she leave work permanently due to her reactions to the workplace when she returned after the leave.

(9) On October 12, 2015, claimant resigned from work effective immediately.

CONCLUSIONS AND REASONS: Claimant voluntarily 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). “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). 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.

Claimant testified credibly about her anxiety and her physical and emotional reactions to workplace pressures after the employer’s reorganization in January 2015. At hearing, the employer’s witnesses did not challenge claimant’s description of her workload, the severe consequences the workload had on her emotional and physical well-being or that she had made concerted efforts to control its impacts on her health by seeking medical and mental health treatment. On this record, claimant faced a grave situation after her return to work on October 5, 2015.

In its written arguments, the employer did not dispute the gravity of the circumstances that caused claimant to resign on October 12, 2015, but contended that claimant did not pursue reasonable alternatives to quitting, such as seeking a new position in the employer’s organization, speaking with the employer or the employer’s human resources department in an attempt to relieve the work-related pressures she felt or apparently seeking another leave of absence. However, the issue is not whether some unexplored alternatives were theoretically available to claimant, but whether a reasonable and prudent person experiencing anxiety of the nature and apparent severity that claimant did would have undertaken those options rather than quitting. Here, because claimant had already looked for a different position in the employer’s organization and found none available, it was not unreasonable for her to conclude that it was futile to explore that option further. Claimant had already been away from the workplace on leave, seeking treatment for her symptoms during that leave and, upon her return to the workplace, her symptoms immediately re-surfaced with the same intensity. It was reasonable for claimant to conclude that seeking a third leave was not likely to result in an amelioration of her symptoms when she returned to work, particularly when claimant’s mental health counselor recommended that she leave work to remove the source that triggered her anxieties. To require that claimant allow the employer and its human resources department an opportunity to address her situation would also require claimant to subject herself again, for an indefinite and uncertain period of time, to the same grave symptoms she had already been unable to control, with no assurance that the employer would succeed in doing so. On the facts in this record, a reasonable and prudent person who had experienced the emotional and physical symptoms that claimant experienced, and whose mental health counselor recommended that she leave work, would have quit, and would not have considered that any options short of leaving work were reasonable alternatives to quitting.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-52374 is affirmed.

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

DATE of Service: March 14, 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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