

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0216-R**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 17, 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 # 140417). Claimant filed a timely request for hearing. On February 1, 2016, ALJ Vincent conducted a hearing, and on February 9, 2016 issued Hearing Decision 16-UI-52629, concluding that claimant quit work with good cause. On February 29, 2015, the employer filed an application for review with the Employment Appeals Board (EAB). On March 8, 2016, EAB issued Employment Appeals Board Decision 2016-EAB-0216, reversing Hearing Decision 16-UI-52629 as unsupported by a complete record, and remanding this matter to the Office of Administrative Hearings (OAH) for further proceedings. On March 8, 2016, OAH provided EAB a complete hearing record.

EAB considered the entire hearing record and the employer's written argument. However, the employer's argument was based, in part, on new information contained in documents not offered into evidence at the hearing, and the employer failed to show that factors or circumstances beyond its reasonable control prevented it from offering the information into evidence at that time. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Emergency Communications of Southern Oregon employed claimant from November 1, 1991 to June 20, 2015.

(2) From July 1, 2010 to June 20, 2015, claimant worked for the employer as a as a 911 dispatcher. The essential functions of that position included efficient information processing and recollection; a high level of mental stability and professionalism; ability to work rotating, extended and emergency shifts;

ability to remain at work for the entire scheduled shift; speak with a well-modulated voice; maintain a positive attitude; rapidly and accurately make decisions; reliably report for work; and work effectively with others. Those competencies were required under stressful conditions.

(3) Claimant suffered from chronic depression and anxiety, for which she received medical treatment from a psychiatrist and counselors, including prescription medications. During the course of her employment, claimant felt increasingly marginalized and mistreated at work, and believed she was targeted and her behavior unfairly scrutinized because she stood up for herself. The employer required claimant to undergo fitness for duty evaluations in 2006 and 2010. The 2006 evaluation resulted from situational stress in claimant's personal life that exacerbated her depression, making her overly emotional and unable to remain composed at work. The 2010 evaluation resulted from situational stress at work that again exacerbated claimant's depression, resulting in her being placed on administrative leave.

(4) In early 2015, claimant "experienced a loss," causing her to "grieve at work, sobbing and unable to speak." Employer Exhibit 3 at 5. Claimant could not stop herself from crying at work, and felt that no one there showed concern for her wellbeing. In February 2015, claimant was "hurt and mad and felt attention needed to be drawn to her situation." Employer Exhibit 3 at 5. Her emotional distress led to her posting a message on Facebook stating that "people were vulnerable and that bullying could lead people to committing suicide." Employer Exhibit 3 at 5. The following day, members of the employer's administrative personnel met with claimant and expressed concern for her wellbeing, asserting that she appeared to have a "lot on her plate." Employer Exhibit 3 at 5. The employer sent her to a counselor to assess her "stability and safety," and placed her on indefinite administrative leave. Employer Exhibit 3 at 5.

(5) The employer required claimant to undergo a fitness for duty evaluation on March 17, 2015. Claimant reported to the evaluating psychologist that she no longer felt depressed, but had been experiencing a high level of anxiety for several months due to perceived mistreatment in the workplace based on her mental health issues, and believed the employer was attempting to discharge her. Claimant conceded that she was not fit for duty at that time, and the psychologist determined that she was not currently capable of performing the essential functions of her job and could not do so in the future without being allowed to take medical leaves of absences when "major life stressors" exacerbated her depression and anxiety. Employer Exhibit 3 at 6. After some time, claimant informed the employer that she was ready to return to work, but the employer did not respond. Claimant believed the employer was discriminating against her due to her mental health issues.

(6) In early to mid-June 2015, claimant and the employer tentatively agreed that claimant would resign her position, effective June 20, 2015, provided they reached a settlement agreement that included an agreed upon severance package and reference letter. As of June 15, 2015, they had agreed upon a severance package that included \$43,353 in wages, \$11,132.79 for medical insurance, \$520.20 for healthcare reimbursements, \$4,335.30 in deferred compensation, and \$278.46 for life insurance premiums. However, claimant and the employer still had not agreed upon a final settlement agreement, or the content of the reference letter.

(7) On June 16, 2015, claimant provided the employer a draft reference letter, which included language stating claimant was fit for duty. Employer Exhibit 2 at 1. The employer demanded that the language

be removed. On June 17, 2015, claimant's attorney emailed the employer's attorney that he would consult with his client, and that "The last day of employment needs to be June 20, assuming we get agreement on the draft and letter of reference." Employer Exhibit 2 at 1.

(8) On June 18, 2015, claimant's attorney emailed the employer's attorney a draft settlement agreement and letter of reference that retained the fitness for duty language. The employer's attorney replied via email that if claimant insisted on fitness for duty language, the reference letter should state that she was "not currently capable of performing the limited functional competencies of her position." Claimant Exhibit 1. The employer's attorney's reply concluded with the statement, "As a reminder, your client's last day of work regardless of this language/settlement agreement is June 20." Claimant Exhibit 1. Claimant's attorney communicated that statement to her. Claimant therefore believed the employer was going discharge her on June 20, 2015 her if they did not agree on the content of the letter of reference and enter into the settlement agreement by that date.

(9) On June 19, 2015, claimant and the employer agreed on the content of the letter of reference and entered into the settlement agreement in which claimant agreed to quit work, effective June 20, 2015. The employer agreed to pay claimant the severance package agreed to on June 15, 2015, and refrain from disseminating disparaging comments about claimant in any.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant quit working for the employer 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). Claimant suffered from chronic depression and anxiety, permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

In early to mid-June 2015, claimant and the employer tentatively agreed that claimant would resign her position, effective June 20, 2015, provided they reached a settlement agreement that included an agreed upon severance package and letter of reference. At that time, claimant had been on administrative leave for approximately three months because the employer did not believe she was fit for duty. Assuming the employer eventually would have allowed claimant to return to work, she would have returned to a stressful work environment in which she felt increasingly marginalized, mistreated, targeted and unfairly scrutinized, and ultimately discriminated against due to her mental health conditions, which likely would have exacerbated those conditions. By tentatively agreeing to quit work, claimant was able to negotiate a settlement agreement that included a generous severance package, a neutral reference letter, and the employer's agreement to refrain from disseminating disparaging comments about claimant in any way. In addition, as of June 18 or 19, 2015, claimant believed the employer was going to discharge her on June 20, 2015 if they did not enter into the settlement agreement by that date, presumably leaving

claimant with a discharge on her employment record with no neutral reference letter or non-disparagement agreement, and no severance package. Under those circumstances, no reasonable and prudent person with the characteristics and qualities of an individual with chronic depression and anxiety would have continued to work claimant's employer for an additional period of time.

Claimant quit working for the employer with good cause. She is not disqualified from receiving benefits based on this work separation.

**DECISION:** Hearing Decision 16-UI-52629 is affirmed.

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

**DATE of Service:** April 13, 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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