

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0294

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 112626). Claimant filed a timely request for hearing. On March 7, 2016, ALJ Jarry conducted a hearing, and on March 10, 2016 issued Hearing Decision 16-UI-54767, affirming the Department's decision. On March 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) TRG Customer Solutions, Inc. employed claimant as an inbound technical support representative in its call center from July 1, 2015 to August 17, 2015.

(2) The employer considered claimant's job performance acceptable. As it did with all employees, the employer provided claimant with several weeks of training at the beginning of his employment, as well as ongoing training throughout his employment; monitored claimant's calls; reviewed the calls with claimant; and gave him a second-by-second critique of the calls.

(3) Claimant had never before worked in a call center, was unused to the extreme pressure to perform and considered the constant monitoring and scrutiny of his performance "Orwellian-like." Claimant did the best he could, but call times and escalation rates were not good enough, he could not keep up with the work, and he was not improving. He found instructions confusing. He was receiving ongoing trainings, but did not find them helpful.

(4) Claimant experienced physical symptoms as a result of the stress and pressure he felt at work. He began to experience hair loss for the first time in his life, weight loss, and lack of concentration, insomnia and depression. He felt "miserable." Audio recording at ~24:15. He attributed the sudden onset of his symptoms to his feelings about his work.

(5) Claimant spoke with his supervisor about his concerns on several occasions. She did not provide him with much feedback other than to tell him to keep working, and she thought he would improve over the following months. Claimant also sought counseling with his pastor. Claimant did not feel he could keep working under the same pressure and conditions for a period of months. Claimant decided to quit work to protect his health.

(6) The employer considered it normal for new employees to feel overwhelmed. Had claimant mentioned his concerns the employer was prepared to offer him additional coaching.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant had good cause for quitting work.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

In Hearing Decision 16-UI-54767, the ALJ concluded claimant quit work without good cause. The ALJ reasoned that, although claimant “believed that he was not performing his job duties well and experienced stress-related symptoms as a result,” he had only been doing the work for one month at the time he quit and his situation was not grave because the employer expected employees to feel overwhelmed and was prepared to offer him additional coaching. Hearing Decision 16-UI-54767 at 2. The ALJ further concluded that claimant “could have allowed himself more time to become acclimated to the job” instead of quitting when he did. *Id.* We disagree.

While the employer’s witness testified that it was normal for new employees to feel overwhelmed, the witness did not testify that it was normal for employees to experience such a high level of stress and discomfort with the work that they lost their hair, lost weight, could not concentrate, could not sleep, and experienced depression. Considering that the scrutiny and coaching claimant experienced at work was part of what triggered claimant to experience those symptoms, we cannot conclude that approaching the employer to obtain additional coaching a reasonable alternative for claimant to quitting work. Nor is continuing to work ever considered a reasonable alternative to quitting.¹

¹ The Court of Appeals has repeatedly and emphatically stated that it is immaterial to a quit analysis that an individual could have continued working. Not only is it “true in every case”, it is “beside the point” because it “does not answer the question” of whether a reasonable and prudent person would quit work. See e.g. *Campbell v. Employment Dep’t.*, 256 Or. App. 682, 303 P.3d 957 (2013), *Strutz v. Employment Dep’t.*, 247 Or. App. 439, 270 P.3d 357 (2011), *Campbell v. Employment Dep’t.*, 245 Or. App. 573, 263 P.3d 1122 (2011), *Warkentin v. Employment Dep’t.*, 245 Or. App. 128, 261 P.3d 72 (2011), *Hill v. Employment Dep’t.*, 238 Or. App. 330, 243 P.3d 78 (2010).

Claimant did not quit work because he thought the employer believed he was not performing his work well. He quit to protect his health because he had such a difficult time coping with the work that he experienced the sudden onset of ill health that included hair and weight loss, lack of concentration, insomnia and depression he attributed to his working conditions. Although claimant did not approach the employer with his concerns or allow the employer the opportunity to address them, nothing in this record indicates that the employer's working conditions or monitoring and coaching process abnormal for a call center. Claimant appears to have had an abnormally severe reaction to and inability to cope with normal call center working conditions, and the only apparent alternative available – more coaching – was not reasonable for this claimant. No reasonable and prudent person experiencing hair loss, weight loss, inability to concentrate, insomnia and depression because of his inability to cope with the working conditions would continue working in those same conditions for an additional period of time.

Claimant quit work with good cause. He is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 16-UI-54767 is set aside, as outlined above.²

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

DATE of Service: April 12, 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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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.