

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0306

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 153420). Claimant filed a timely request for hearing. On February 25, 2016, ALJ Logan conducted a hearing, at which the employer failed to appear, and on March 8, 2016 issued Hearing Decision 16-UI-54566, affirming the Department's decision. On March 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Garten Services Inc. employed claimant, last as a lead custodian, from March 12, 2012 to November 17, 2015. The employer was a non-profit corporation whose mission included assisting people with disabilities to find and maintain employment.

(2) Claimant suffered from bipolar disorder, depression, fibromyalgia and a back condition for which he was prescribed muscle relaxants and pain medication.

(3) Near the end of his employment, the employer's custodial manager accused claimant of using drugs when he called in sick and, claimant believed, treated employees "like dirt." Audio Record ~ 15:00 to 17:00. He also believed she required him to work overtime disproportionately to other employees. Claimant did not bring his concerns to the custodial manager's supervisor.

(4) As a lead custodian, part of claimant's job was to supervise other custodians on his team. Around November 1, 2015, the custodial manager informed claimant that she was moving him to another team because she believed he was "cutting corners." Audio Record ~ 13:15 to 15:00. Claimant got "pissed off," and about that time saw a sign in a Plaid Pantry window that it was "hiring now," obtained an application, and, on November 3, 2015, gave the employer two weeks' notice of his intention to quit. Audio Record ~ 11:30 to 13:00; 19:30 to 21:00.

(5) On November 17, 2015, claimant quit work because he was dissatisfied with his working conditions and to seek other work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). Claimant had bipolar disorder, depression, fibromyalgia and a back condition for which he was prescribed medication, likely permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with such 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 the employer for an additional period of time. Quitting work without good cause includes quitting suitable work¹ to seek other work. OAR 471-030-0038(5)(b)(A).

Claimant asserted that he quit work, in part, because he was dissatisfied with what he considered his manager’s personal mistreatment of him and his coworkers, her accusation that he was “cutting corners” on jobs and his impending transfer to another team, which he objected to. Audio Record ~ 19:00 to 20:00. However, claimant failed to show that he attempted to bring those concerns to his manager’s superiors or that his impending transfer would result in a cut in pay or other benefits of employment or result in any other harm to him. Accordingly, the record fails to show that no reasonable and prudent person with the characteristics and qualities of an individual with claimant’s impairments would have brought his concerns to management and continued to work for the employer for an additional period of time.

Claimant also asserted that he quit work, in part, because he believed he would be hired very quickly by Plaid Pantry after seeing a sign in a store window that it was “hiring now.” Audio Record ~ 11:30 to 13:15. Claimant asserted that he obtained and submitted a job application, a work seeking activity, before submitting his quit notice to the employer, and attended a job interview, another work seeking activity, the day after he quit. Audio Record ~ 11:30 to 13:15. Although claimant may have been optimistic about being quickly hired by another employer, under OAR 471-030-0038(5)(b)(A), quitting work to seek other work is leaving work without good cause.

Claimant voluntarily left work without good cause, and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 16-UI-54566 is affirmed.

¹ In determining whether any work is suitable for an individual, the Department considers, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190. Claimant did not assert, and the record does not show, that work as a custodian was not suitable for him.

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

DATE of Service: April 15, 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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