

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0406**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 134634). Claimant filed a timely request for hearing. On March 23, 2016, ALJ Menegat conducted a hearing, and on March 31, 2016 issued Hearing Decision 16-UI-56198, concluding that claimant quit work with good cause. On April 8, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) City of St. Helens employed claimant as probationary municipal court clerk from November 20, 2014 until September 11, 2015.

(2) Throughout her employment, claimant had a poor working relationship with a part-time coworker. Claimant thought the coworker was “passive-aggressive” toward her, refused to help her, and complained excessively and unfairly about her to the municipal judge. Audio at ~7:50. By January 2015, claimant was experiencing anxiety at work. Around that time, claimant saw her physician for an evaluation and to ease her symptoms. The physician recommended that claimant pursue mental health treatment with a counselor. Claimant did so.

(3) Sometime before June 2015, claimant and the part-time coworker separately complained about each other to the finance director. Sometime after, a union representative met with claimant, the coworker and the finance director in an attempt to improve their working relationship. The relationship did not improve. Beginning in approximately July 2015, claimant and the coworker were expected to meet together weekly with the finance director to discuss their work and any problems they had with it. The finance director viewed these meeting as an “opportunity” for claimant and the coworker to reach a “common ground and direction.” Audio at ~28:15, ~29:10. Claimant and the coworker’s relationship still did not improve.

(4) Beginning in approximately July 2015, claimant’s emotional state began to seriously deteriorate. Thereafter, claimant’s anxiety worsened, she became depressed, began to experience migraine

headaches, and was “mentally and physically sick.” Audio at ~8:50. As time passed, claimant was “scared” to go to work, “could not stop crying,” was unable to keep food down, had nightmares and found it progressively more difficult to function and “do my day to day tasks.” Audio at ~10:48. By the middle of August 2015, claimant was having severe anxiety attacks at work and thought she could not continue working in the face of her symptoms because she “was not in my right mind.” Audio at 12:18, ~13:12. The last day claimant worked was August 18, 2015. Claimant did not report for work thereafter.

(5) After August 18, 2015, claimant’s mental health continued to worsen. She still frequently cried and was unable to leave her house except to keep appointments with her physician. Claimant’s physician referred her to a psychiatrist for evaluation and further treatment, believing that the counselor’s treatment was not adequate to meet her needs. The physician did not prescribe medications to claimant because claimant could not tolerate them, or they did not work for her.

(6) On September 11, 2015, claimant sent an email to the finance director in which she stated she was not able to return to work and was trying to obtain an appointment with the psychiatrist to whom she had been referred. Claimant attached to the email two work status reports signed by her physician excusing her from work from August 25 through August 28, 2015 and from September 1 through September 8, 2015. After this email, claimant did not communicate further with the employer because it was “hard [for her] to think clearly” and she felt she was “out of [her mind].” Audio at ~19:09. On September 27, 2015, the employer sent claimant a letter in which it informed claimant that she needed to obtain additional excuses from her physician covering her absences after September 8, 2015 to maintain her job, and that she should seek a leave under the Family Medical Leave Act (FMLA) or the Oregon Family Leave Act (OFLA). The letter stated claimant needed to take one or more of these actions by October 9, 2015 or the employer intended to process a work separation. After this letter was sent, claimant did not communicate with the employer. Claimant’s mental state did not allow her to take the steps the employer required. Claimant also did not respond to the employer’s September 27, 2015 letter because she “did not have a date when things for [her] were going to get better.” Audio at ~12:58.

(7) On October 12, 2015, the employer sent a letter to claimant notifying her since she had not communicated with it by October 9, 2015, the employer had processed a work separation.

**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). Claimant experienced serious anxiety and depression for nine months preceding the work separation for which she sought medical treatment and, rather than improve, her symptoms substantially worsened from mid-August 2015 through October 12, 2015. Although claimant did not present a professional evaluation diagnosing the condition(s) from which those symptoms arose, from her description, they appeared to constitute permanent or long-term “physical or mental impairments” 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.

Claimant's testimony about the severity of her mental health symptoms around August 18, 2015 and thereafter was not challenged at hearing. Since there was no reason to doubt that testimony, it is accepted as an accurate account of her state of mind at that time. Claimant's failure to respond to the employer's September 27, 2015 letter reasonably led the employer to conclude she had voluntarily left work on September 8, 2015, the last day for which she had a physician's excuse for her absence. However, based on claimant's description of her symptoms and her explanation of why she was unable to respond as the employer requested, it cannot be concluded that claimant's failure to act was volitional rather than being a manifestation of her underlying emotional illness. A reasonable and prudent employee, with the level of anxiety and depression that claimant experienced and with the degree of associated cognitive impairment, would have failed to respond to the employer's September 27, 2015 letter as claimant did and likely would not have taken the steps needed to preserve her employment. On this record, claimant met her burden to show she had good cause to leave work when she did by failing to act in response to the employer's letter.

Claimant voluntarily left work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-56198 is affirmed.

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

**DATE of Service:** May 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](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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