
State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0498

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121820). Claimant filed a timely request for hearing. On March 22 and April 7, 2016, ALJ Wyatt conducted a hearing, and on April 11, 2016 issued Hearing Decision 16-UI-56953, concluding claimant voluntarily left work with good cause. On May 2, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Philco Demolition employed claimant from October 22, 2014 until January 22, 2016 as an office manager to perform bookkeeping, payroll and other administrative duties.

(2) During 2015, the employer began to operate its offices from a house that had been unoccupied for a time due to foreclosure. Claimant began experiencing a chronic sick, dizzy feeling and headaches which she attributed to mold or other unknown substance in the new office location. Other employees experienced the same symptoms. In response to claimant's complaints, the employer installed a carbon monoxide detector, tested the house for radon, and used an air filter. The employer's efforts did not uncover a cause for claimant's symptoms and claimant's health did not improve.

(3) In October 2015, claimant communicated with Oregon Department of Transportation (ODOT) to register the employer's vehicles for intrastate use. In late 2015, claimant felt stress from work because she believed the employer violated ODOT guidelines by operating one vehicle in Washington that was not registered to operate outside Oregon.

(4) On about January 12, 2016, claimant understood from comments made by the employer's project manager that one of the employer's temporary employees was not authorized to work in the United States. Claimant told the manager, "No, I do not work like that. That is not right." Transcript at 7. Claimant was dissatisfied that she might be given inaccurate payroll information to report for tax purposes while performing her payroll duties. On January 15, 2016, claimant reported her concerns about the allegedly undocumented employee to an Oregon Occupational Safety & Health Division

(OSHA) representative and the Bureau of Labor and Industries (BOLI). OSHA and BOLI took no action in the matter.

(5) On January 19, 2016, claimant and the employer's owner had a "large argument" (Transcript at 5) regarding an employee from a recent job who had worked significant overtime. The owner questioned whether claimant had calculated the overtime correctly, and they both engaged in an argument involving yelling.

(6) On January 22, 2016, claimant left work because of the effects of workplace stress and illness caused by her work environment.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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 P3d 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 left work due to the effect of her work environment on her health. The employer's offices were in a house that had been unoccupied for a time before the employer began renting it. Something in the work environment caused claimant to experience chronic dizziness and headaches. The employer's evidence that claimant's symptoms were "hypochondria" or caused by factors outside the workplace was not persuasive because other employees, including the owner, experienced the same symptoms, and claimant's symptoms were relieved after she left work with the employer. Transcript at 64-66. The evidence persuades us that something about the office caused claimant to become ill. Claimant also testified at hearing regarding other factors that caused her stress from work, including her suspicion that the employer had hired an undocumented worker. While the evidence regarding that and the other allegations is no more than evenly balanced between the parties, we are persuaded that claimant's belief that she might be complicit in breaking the law in performing her work duties contributed to her work stress. Experiencing chronic illness due to working conditions amounts to a grave circumstance.

The employer attempted to determine what caused the illness, but was unable to do so. There is no evidence in the record of other measures claimant or the employer could have taken that would have made a difference in claimant's ability to work in the employer's building without continuing symptoms. While it is probable that claimant's symptoms would have abated during a leave of absence away from the employer's offices, there is no evidence to show leave was offered or available to claimant, or that that claimant could return to work in the same environment that caused her to experience the symptoms without those symptoms returning. For those reasons, we conclude that a reasonable and prudent person experiencing chronic dizziness and headaches associated with her

working conditions would leave work rather than pursuing alternatives or waiting an additional period of time for the employer to pursue alternatives to improve the health of her working environment.

Claimant had good cause for voluntarily leaving work. She is not subject to disqualification from benefits on the basis of her work separation.

DECISION: Hearing Decision 16-UI-56953 is affirmed.

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

DATE of Service: June 6, 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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