

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0607

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85943). Claimant filed a timely request for hearing. On February 24, 2016, ALJ Wipperman conducted a hearing, and on March 3, 2016 issued Hearing Decision 16-UI-54269, affirming the Department's decision. On March 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On April 19, 2016, EAB issued Appeals Board Decision 2016-EAB-0302, reversing Hearing Decision 16-UI-54269 and remanding the case to the Office of Administrative Hearings (OAH) for additional information. On May 3, 2016, ALJ Wipperman held a second hearing, and on May 11, 2016, issued Hearing Decision 16-UI-59354, concluding claimant voluntarily left work with good cause. On May 23, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record and considered the parties' written arguments to the extent they were based thereon. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) AMC Parts Store, a parts retailer and shipper, employed claimant, last as its internet shipping manager, from April 12, 2004 to October 15, 2015.

(2) Claimant suffered from hypertension and anxiety and was prescribed medications to treat those conditions from at least August 2012 through the end of his employment.

(3) In January 2012, the employer transferred claimant from the position of retail salesperson to manager of its internet shipping division. The owner lived out of state and generally relied on the store's long-standing general manager to run the day to day operation of the business. Whenever claimant brought concerns about his division or suggestions for improvement to the owner, the owner deferred claimant to the store manager, whom claimant believed generally ignored his suggestions and undercut his effectiveness and authority by the way she interacted with him and the employees he

managed. Claimant's frustrating working relationship with the owner and general manager caused him significant stress and negatively impacted his health and home life because he typically brought his frustrations home. By September 2012, claimant's medical provider had prescribed him medications to help control both his anxiety and high blood pressure and advised him to seek other employment to alleviate his stress.

(4) Over time, tension developed between the shipping and retail staffs. Claimant's preferred method of addressing issues involved large, open meetings with managers and staffs. The general manager's preferred method of addressing issues involved one-one one discussions with employees of both divisions. When claimant's staff reported these discussions to claimant, he believed the manager was attempting to damage his authority and exclude him from management decisions. He also believed she falsely blamed him for the tension between the retail and shipping divisions which caused him stress.

(5) In fall 2015, the employer planned to move to a larger location. Claimant suggested to the general manager an employee trip to the new location as a morale booster. On September 15, 2015, claimant took the shipping staff to the new location and discussed the potential of the new location and the productivity of the shipping crew with the staff members. The following day, a manager in training asked claimant to meet with her to discuss the employer's website. When claimant arrived, the general manager was present and immediately confronted him about the trip the day before. She accused claimant of conducting a "secret meeting" which he used to criticize the retail staff and the business in general, which claimant denied. Transcript, May 3, 2016, at 10. During the days following, the general manager conducted one-on-one interviews with attendees at the meeting and inquired about claimant's management. Claimant believed that she was further undermining his authority by the manner in which she was conducting the interviews.

(6) On September 29, 2015, claimant met with the owner regarding the September 15 trip and its aftermath including the general manager's interviews with his staff and their impact on his ability to effectively manage them. Claimant hoped the meeting would involve the general manager as well and would produce a positive outcome on their working relationships. However, the owner met with claimant one-on-one, again simply deferring to the general manager and telling claimant she was "never wrong." Hearing, February 24, 2016, at 7. Claimant concluded his working relationship with the owner and general manager would never improve which increased his stress and anxiety.

(7) When claimant returned home from the meeting and discussed it with his wife, he appeared to break down under the stress. His wife told him she could not take the effect that his work had on him and her anymore and that unless he quit, she would leave him. Claimant considered the affect that his job was having on his health and home life and on September 30, 2015, gave the employer two-week's notice of his intent to quit, effective October 15, 2015. On October 15, 2015, claimant quit work to protect his health and marriage.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work with 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 P2d 722 (2010). Claimant suffered from hypertension and anxiety for which he had been treated with medication from at least 2012. Accordingly, claimant's conditions were 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 his employer for an additional period of time.

In the present case, the refusal of the employer's owner's to get involved in the apparent dispute between the general manager and claimant over the supposed "secret meeting" and the general manager's accusation that claimant's interaction with staff at the meeting exacerbated the division between the retail and shipping staff and caused an apparent worsening of claimant's work stress and anxiety for which he already was being treated. It spilled over into his home life to the extent that his wife threatened to leave their relationship unless he quit. Claimant would have experienced negative marital consequences if he refused to quit and remove himself from his work environment. In addition, his medical provider had recommended that he seek work that was less stressful and less detrimental to his medical conditions. Given these circumstances, we find that no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairments would have continued to work for his employer for an additional period of time. We therefore conclude that claimant quit work with good cause and is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 16-UI-59354 is affirmed.

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

DATE of Service: July 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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