

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0627

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85336). Claimant filed a timely request for hearing. On May 6 and 16, 2016, ALJ Seideman conducted a hearing, and on May 18, 2016 issued Hearing Decision 16-UI-59854, affirming the Department's decision. On May 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: Claimant's written argument included information not received into evidence during the hearing. The information corroborated or clarified information claimant provided during the hearing. The new information was relevant and material to EAB's determination, and it appears offering the information during the hearing was beyond her control based on her failure to understand that the ALJ had misconstrued her evidence or required additional explanations regarding her mental health at the time she quit. Under OAR 471-041-0090(2) (October 29, 2006), EAB therefore admitted claimant's written argument into evidence as Exhibit 1. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at EAB Exhibit 1.¹

FINDINGS OF FACT: (1) Walmart Associates, Inc. employed claimant as an accounting office associate from August 21, 1996 to December 31, 2015.

(2) Claimant has had migraine headaches for most of her life. She also suffered from anxiety and depression for an unspecified period of time. In approximately 2010, claimant's symptoms began to

¹ As claimant has certified that she provided a copy of her argument to the employer, we have not included an additional copy of it when mailing this decision.

worsen. The symptoms were worse during her workweek. Claimant received medical treatment for them, and was prescribed Xanax, Zoloft and Maxalt [phonetic] to treat her conditions.

(3) Claimant attributed her worsening symptoms to her stress and frustration at work. She routinely dealt with employees who did not know and refused to learn accounting office procedures. Assistant managers loitered in the accounting offices to "hide out" from employees and gossip, which prevented claimant from timely completing her work and made her feel apprehensive that if she "got on their bad side" they would speak about her in a "nasty way," too. Exhibit 1. Claimant's duties included finding and notifying management about employees' cashiering errors, which caused them to become upset with claimant when they were disciplined for those errors. Claimant also felt increased stress because there were insufficient backups for the accounting office's work, which made the office short-staffed when workers were absent and caused claimant to have to do their work as well as her own.

(4) Claimant "literally begged" management for help dealing with the cashiers, but it did not help. Exhibit 1. Claimant asked management for help with her other concerns, but her working conditions did not improve, and management often did not respond to claimant's emailed requests for help. She spoke with assistant managers, the store managers, the district asset prevention manager and the district manager to ask for help with the situations that were causing her work-related stress. Although managers sometimes told claimant that they would take action based on her concerns or complaints, nothing changed, and, after a time, claimant stopped asking for help because she felt it was futile.

(5) Claimant routinely felt frustrated, angry, stressed and depressed because of her working conditions. The accumulated stress of her working conditions affected her health. Claimant had chronic migraines, which worsened during the last few years of her employment. Claimant felt deeply depressed and sometimes had difficulty functioning.

(6) Claimant received medical treatment every three months since 2014. She last discussed her stress and anxiety levels, and her worsening migraines, with her healthcare provider in September or December 2015. Although claimant's healthcare provider did not recommend claimant quit work, she assisted claimant with medications to improve her symptoms, said it would be nice if she did not have to work in those conditions, and encouraged claimant to think about making some changes.

(7) In 2015, claimant told her husband that she wished she would break her arm or leg so she would not have to go to work. She "often wished [she] was dead" and felt "completely miserable and dreaded going to work every single day." EAB Exhibit 1. By December 2015, claimant felt incapable of continuing to work for the employer.

(8) On December 16, 2015, claimant notified the employer of her intent to quit work in two weeks. On December 31, 2016, claimant's resignation became effective. It took claimant approximately two months after quitting to recuperate from her severe symptoms, including periods of time when she felt incapable of getting out of bed. Since quitting, however, claimant has experienced reduced symptoms of depression, migraines and anxiety.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant quit 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 had chronic migraines, depression and anxiety, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

The ALJ concluded claimant quit work without good cause, reasoning that, despite her description of the migraines, anxiety and stress she attributed to her working conditions, her "situation was not so grave that she didn't have any reasonable alternative but to quit. She could have discussed more deeply with her nurse practitioner her concerns about the stress at work. She could have also done that with her assistant manager, who was very supportive. However, she just quit and took it easy for two months."² The record does not support the ALJ's decision.

At the time claimant quit work, she had been under her nurse practitioner's care since 2014, receiving treatment for her stress, anxiety and migraines, discussing her working conditions with the nurse practitioner, and undergoing various types of treatment. In light of that evidence, the record fails to show that discussing her work-related stress with her nurse practitioner would have had any effect on claimant's health conditions. At the time claimant quit work, she had discussed her concerns about her working conditions and migraines with several layers of management, including her assistant manager, who, in claimant's experience, was not always supportive, and nothing was done to change the working conditions that were causing claimant stress. In light of that evidence, there is little to support the ALJ's conclusion that discussing her stress from work "more deeply" with those managers would have resulted in any changes to her working conditions. Nor does the record support the ALJ's dismissive characterization of claimant's two-month post-employment recuperation period, during part of which claimant was so ill she was incapable of getting out of bed, as "just . . . [taking] it easy."

At the time claimant quit work, she had experienced several years of worsening symptoms to the point that she felt so ill and hopeless about her working conditions that she "was completely miserable and dreaded going to work every single day," wished that she would suffer a serious bodily injury just to avoid having to go in to work, and "often wished she was dead." She was so ill at the point that she quit work that it took two months for her to recover, much of that time spent in a condition where she had difficulty getting out of bed. No person with the qualities and characteristics of an individual with chronic migraines, anxiety and depression, experiencing that severity of symptoms, would have felt they had any reasonable alternative but to quit work and to remove herself from the environment triggering them. Notably, since quitting work, claimant's mental health has improved and her symptoms lessened. For those reasons, we conclude that claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

² Hearing Decision 16-UI-59854 at 2.

DECISION: Hearing Decision 16-UI-59854 is set aside, as outlined above.³

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

DATE of Service: June 23, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

³ 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.