

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0747

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 4, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 132759). Claimant filed a timely request for hearing. On May 17, 2016, ALJ Murdock conducted a hearing, and on June 3, 2016, issued Hearing Decision 16-UI-61043, affirming the administrative decision. On June 23, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Cascade Plating and Machine employed claimant as an accounting assistant from March 1, 2015 until March 18, 2016. The employer's office and human resources manager supervised claimant's work.

(2) Claimant has been diagnosed with anxiety disorder. During the time she worked for the employer, claimant sought assistance from a vocational rehabilitation counselor because she felt she had problems communicating with her supervisor. The counselor arranged for claimant to work with a job coach in an effort to improve claimant's communication skills. Transcript at 12-13.

(3) During the first three months of her work for the employer, claimant had some difficulties adjusting to her job and learning the tasks she was expected to perform. Sometime in June 2015, she met with her supervisor and "had a very open, it was a very positive conversation" about claimant's work. Claimant was encouraged by this discussion. Transcript at 47.

(4) Claimant had problems following the directions of her supervisor, and the supervisor often spoke with claimant about mistakes claimant had made. The supervisor's practice was to ask claimant why she had made the mistake; she did so to help claimant understand what she had done wrong so she could avoid making the same mistake in the future. Transcript at 28, 31. Claimant also had problems with the employer's newly-implemented software system and repeatedly asked the person responsible for the employer's internal information technology (IT) for assistance with the system. On a number of occasions, claimant asked the IT manager to make changes in the system that the manager had no authority to make. The IT manager told claimant that she needed to obtain permission from her (claimant's) supervisor to make these changes. When claimant continued to request changes, the IT manager asked claimant's supervisor to instruct claimant to obtain permission from the supervisor before making these requests. Transcript at 39.

(5) Beginning in January 2016, claimant began to feel that her supervisor was treating her in a rude and hostile manner. Claimant did not speak with her supervisor about these concerns, because she felt it would be futile to do so. Claimant did discuss her concerns with her supervisor's superiors, the shop manager and the general manager, because she also believed it would be futile to do so. Her belief was based on the shop manager's relationship with claimant's supervisor – they were husband and wife – and the friendly relationship between the shop manager and general manager. Transcript at 8, 51.

(6) Sometime in late February or early March 2016, claimant began to experience problems related to her anxiety disorder that occurred after interactions with her supervisor. These problems, which occurred almost daily, included impairment of claimant's cognitive abilities. Claimant did not take time off from work when she experienced these symptoms, however. Instead, she took medication which resolved the symptoms and allowed claimant to continue working. Transcript at 43.

(7) Also sometime in late February or early March 2016, claimant contacted a mental health professional for assistance with the problems she was experiencing at work. She was unable to obtain an immediate appointment, however, because the mental health professional's schedule was full. On February 25, 2016, claimant contacted her vocational rehabilitation counselor but was unable to speak with her because the counselor was on an extended leave of absence. Claimant talked with two individuals who were not health-care professionals; these individuals advised claimant to quit her job. Transcript at 44.

(8) On March 18, 2016, claimant quit her job for the employer. Claimant left work because she believed her supervisor treated her in a hostile and abusive manner.

CONCLUSION AND REASONS: We agree with the ALJ, and conclude that claimant voluntarily left work without 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 anxiety disorder, 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.

Claimant quit her job because she believed her supervisor treated her in a hostile and abusive manner. According to claimant, her supervisor repeatedly yelled at her, angrily criticized the work that she did, and, if claimant tried to explain or justify herself, “talked over” claimant and refused to listen to what claimant had to say. Transcript at 6. Claimant’s supervisor, however, denied that she ever became angry with claimant, yelled at her, or “talked over” claimant.” The supervisor asserted that her discussions with claimant resulted from the supervisor’s attempts to improve claimant’s work performance by helping claimant understand what mistakes she had made, and why she had made them. Transcript at 14, 19, 31. Claimant and the employer were the only witnesses who testified about the nature of claimant’s work environment,¹ and, on this record, there is no reason to consider either of them more or less credible than the other. Where the record consists of evidence that is equally credible and equally balanced, we conclude that the party with the burden of persuasion, here claimant, has failed to satisfy her burden to prove that a hostile and abusive supervisor created a grave situation for her.

Even if we were to find that claimant’s work environment constituted a grave situation, we would conclude that she had alternatives to quitting. At the time she quit, claimant had not spoken with a mental health professional or the vocational rehabilitation counselor who had been assisting her with her workplace problems. Claimant could have continued her employment, either treating the symptoms of her anxiety disorder with medication (as she had been successful in doing) or taking time off from work until she was able to consult with a mental health professional and her vocational rehabilitation counselor. A reasonable and prudent person who suffered from the same type of anxiety disorder as claimant would have consulted with professionals before deciding that the problems she was experiencing at work left her no alternative but to quit her job.

Claimant failed to establish that she had good cause for voluntarily leaving work. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-61043.

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

DATE of Service: July 29, 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

¹ Although the employer’s IT manager testified that he had never seen claimant’s supervisor “yell at anybody,” he provided no first hand testimony about the nature of the relationship between claimant and her supervisor. Transcript at 40.

'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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