

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0867

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 17, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124658). Claimant filed a timely request for hearing. On July 14, 2016, ALJ Frank conducted a hearing at which the employer did not appear, and on July 22, 2016 issued Hearing Decision 16-UI-64387, affirming the Department's decision. On July 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching his decision.

FINDINGS OF FACT: (1) M Financial Holdings, Inc. employed claimant from August 2, 2000 until April 13, 2016, last as a senior registration specialist. The employer provided financial services to customers through broker-dealers who dealt in securities. Claimant was responsible for issues relating to the registration of those broker-dealers.

(2) In 2006, claimant's physician diagnosed her with severe hypertension. The physician measured claimant's blood pressure at 225/115 and told claimant that her blood pressure at "heart attack level." Audio at ~7:30. The physician advised claimant to quit her job to reduce the stress to which it subjected her and thereby to lower her blood pressure. However, claimant liked her job very much and decided to try to control her blood pressure while continuing to work for the employer. Claimant began taking medication to control her blood pressure and monitored it while at work.

(3) In late 2015, claimant contracted pneumonia and was out of work until February 2016. After claimant was medically released in February 2016, she returned to work.

(4) In February 2016, when claimant returned to work, she was responsible for overseeing the registration of 900 broker-dealers and ensuring they were compliant with registration requirements. The industry standard was to assign only approximately 200 broker-dealers to one registration specialist. Claimant had a very heavy workload. After claimant returned to work, she became concerned that the stress of her position and her heavy workload would adversely affect her blood pressure and her health. Claimant spoke with her supervisor and told the supervisor she needed back-up help to oversee the registration of 900 broker-dealers or her health might be jeopardized. The supervisor did not take steps to lighten claimant's workload. Claimant thought her supervisor was retaliating against her for her participation in an investigation of the supervisor for alleged securities violations. Claimant raised her concerns about her health and the supervisor's retaliation several times with the employer's human resources department and the supervisor's supervisor. Claimant was told they could do nothing to help her and nothing was done. Claimant regularly checked the employer's career page which listed the positions it had available in an effort to transfer to a position that she thought would not harm her health. None were available. Because claimant thought the investigation of her supervisor would reveal that violations had occurred and claimant anticipated those violations would result in the supervisor's discharge, claimant decided to try to continue working until the supervisor was replaced.

(5) Sometime after February 2016, claimant brought up her workload, her health concerns and her need for help with the employer's human resources department. The human resources representative with whom claimant spoke told claimant that it would be best for her to wait to raise these concerns until after her supervisor and other members of management's anticipated work departure. Sometime later, claimant's supervisor and the supervisor's supervisor left employment. In approximately late March 2016, claimant brought up her workload, her health concerns and her need for help with the person who replaced the supervisor. The new supervisor told claimant she was going to make claimant's concerns a "top priority" and she would get back to claimant in two weeks with her proposals. Audio at ~9:40.

(6) On April 13, 2016, claimant, her new supervisor, and another employer representative had a meeting. Claimant anticipated that a topic at that meeting would be the concerns she previously raised with the supervisor and the human resources department. At the meeting, claimant's supervisor asked claimant to explain some aspects of her job. The supervisor did not bring up claimant's concerns or her request for assistance to lessen her workload. The supervisor then told claimant that she was expected to take over the duties of an employee who had left employment in addition to her existing duties. The meeting then concluded. By the supervisor's actions and the assignment of more duties to her, claimant concluded that the employer did not intend to take steps to lessen her workload. Claimant was upset. Claimant returned to her office where she was "physically shaking" and felt her blood pressure "spiking." Audio at ~10:25. Claimant measured her blood pressure and it was "dangerously high." Audio at ~10:37.

(7) After the meeting on April 13, 2016, claimant told her new supervisor she was leaving work immediately. Claimant decided to quit because she believed the employer would not make assistance available to her, did not intend to ease her workload or try to reduce the stress she experienced and her health would be adversely affected.

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 had severe hypertension for ten years, 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.

In Hearing Decision 16-UI-64287, the ALJ concluded claimant voluntarily left work without good cause. The ALJ reasoned that, because claimant testified she did not intend to leave work before the meeting on April 13, 2016, something about the tenor of the conversation at that meeting must have caused claimant to leave work. The ALJ further determined that since there was no evidence showing that the “content of the April 13, 2016 conversation [i.e., the meeting] constituted gravity,” or that to the extent the issues raised during that meeting “upset” claimant, a reasonable person would not have quit work due to that “emotional state,” claimant did not establish that she left work for good cause. Hearing Decision 16-UI-64287 at 3. We disagree.

By focusing principally on the tenor of what was said during the April 13, 2016 meeting and claimant’s resulting emotional state, the ALJ ignored the principal reason that claimant decided to leave work. It was uncontested at hearing that claimant had experienced severe hypertension for the ten years preceding her resignation from work, whether or not she tendered a formal request for a medical accommodation. It was not contested that beginning shortly after she returned to work in February 2016, claimant repeatedly asked her supervisor, the supervisor’s supervisor, the new supervisor and the human resources department to take steps to reduce her workload because she was concerned that, if not addressed, her blood pressure would become dangerously elevated and her health would be impaired. Rather than claimant deciding to leave work because of something in the tone of the exchange between her and the supervisors during the April 13, 2016 meeting as the ALJ suggested, it appears claimant decided to quit because she had concluded the employer did not intend to act to reduce her workload. Given claimant’s dangerously elevated blood pressure after that meeting and the reason for it, it does not appear unreasonable that a reasonable and prudent person with severe hypertension who had asked repeatedly for some assistance in covering her heavy workload to maintain control of her blood pressure and who had just learned that even more work was going to be expected of her, would have concluded her situation was grave.

While the ALJ made the point in Hearing Decision 16-UI-64287 that claimant never submitted medical documentation to the employer about her health conditions, or formally sought a workplace accommodation, this is not dispositive on the issue of the gravity of her circumstances or whether there were any reasonable alternatives to her quitting. Hearing Decision 16-UI-64287 at 3. First, it was undisputed that the employer knew of claimant’s physical conditions and her concerns long before she quit. Second, there was no indication that the employer did not believe claimant or that it did not act to provide assistance to her because it lacked medical paperwork. Third, the employer did not ask claimant to provide medical documentation. On these facts, claimant would not have known and reasonably

should not have known that providing such medical paperwork to the employer would have obviated her decision to leave work, and there was no evidence that, in fact, it would have. A reasonable and prudent person with severe hypertension in claimant's circumstances, who was unable to locate a less demanding position into which to transfer, would have concluded there was no alternative to leaving work when claimant did.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 16-UI-64287 is set aside, as outlined above.

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

DATE of Service: August 24, 2016

NOTE: 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.

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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