

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0908

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 115820). Claimant filed a timely request for hearing. On April 28, 2016, ALJ Seideman conducted a hearing at which the employer failed to appear, and on April 29, 2016, issued Hearing Decision 16-UI-58583, concluding that claimant voluntarily left work with good cause. On May 5, 2016, ALJ Seideman issued Appeals Board Decision 2016-EAB-0542, reversing Hearing Decision 16-UI-58583 and remanding the matter to the ALJ for further development of the record. On July 15, 2016, ALJ Seideman conducted a hearing and issued Hearing Decision 16-UI-63889, concluding that claimant voluntarily left work without good cause. On August 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From September 3, 2002 until January 15, 2016, Costco employed claimant as an optician.

(2) The employer maintained an “open door” policy which specified that any employee was welcome to bring complaints, questions, or concerns to any manager or human resources representative. Claimant knew about and understood this policy because she received a copy of it when she first began work for the employer.

(3) In 2011, claimant was diagnosed with high blood pressure. From December 2011 until May or June 2012, claimant took leave under the Family Medical Leave Act (FMLA) in order to treat her high blood pressure.

(4) When claimant returned to work in 2012, she experienced a number of problems in the workplace because of the poor management practices of her supervisor, the manager of the employer’s optical department. The optical department manager discussed personal matters concerning claimant’s health with other employees, gave favorable treatment to certain employees, had an affair with a married patient, took excessively long lunch breaks, and engaged in personal business during work hours.

Transcript at 8. In addition, the manager reduced claimant's work hours to less than 24 per week. (Claimant was required to work a minimum of 24 hours per week in order to receive employer-paid benefits). After claimant complained to upper level managers, the situation was resolved and claimant's work hours were restored to 24 per week. Transcript at 7. Claimant also felt that she was treated badly by two other employees in the optical department, and that this poor treatment was supported by the optical department manager. Claimant did not complain to the store manager or assistant store manager about her work environment because she was afraid that the optical department manager and other employees would retaliate against her if she did. Transcript at 9. Had she complained about harassment to these or any other upper level managers, they would have made efforts to move her to a different area of the store. Transcript at 24.

(5) In January 2015, the employer hired a new manager for the optical department where claimant worked. Claimant did not complain to the new manager about any of the problems she was experiencing from her two coworkers. Had she done so, the new manager would have changed work schedules so claimant would not have had to work with the two individuals who disliked her.

(6) From July 2015 until September 2015, claimant was on medical leave. Claimant planned to return to work in September, but because of a death in the family, requested and was granted additional leave until January 18, 2016.

(7) In late December 2015 or early January 2016, claimant's doctor released her to return to work. At the end of December, claimant and her husband went to the optical department where claimant had worked to obtain glasses for her husband. Claimant was upset by the cold and unfriendly treatment she received from her coworkers. Claimant did not complain to the manager about this treatment, however. After this incident and after talking with her husband about her situation, claimant decided to quit her job.

(8) On January 15, 2016, claimant voluntarily left work for the employer because of the "hostile environment" and "atmosphere of conflict" she believed she had experienced in the workplace. Transcript at 4 and 5.

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 suffered from high blood pressure with which she had been diagnosed in at least 2011. Accordingly, claimant's condition was a permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h). A claimant with such an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for her employer for an additional period of time.

Claimant testified that she had been enduring a “hostile” work environment and an “atmosphere of conflict” in the workplace since at least 2011, a situation that apparently resulted in her taking leave for treatment of high blood pressure from December 2011 until May or June 2012. Claimant asserted that when she returned to work after her leave, she continued to experience harassment and bullying from two coworkers, and that this behavior resulted from and was encouraged by the poor management practices of the former optical department manager. In regard to her decision to quit when she did, in January 2016, claimant asserted that the new optical department manager the employer hired in January 2015 was attempting to address problems in the workplace, but that the problems “had not...gotten any better.” Transcript at 16. The new manager, however, testified that she never witnessed any bullying or harassment of claimant in the workplace. The evidence regarding the treatment claimant experienced in the workplace at the time she chose to voluntarily leave work was therefore equally balanced. Claimant and the employer were the only witnesses who testified about the nature of claimant’s work environment, 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 workplace constituted 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. Claimant had never complained to the new manager of the optical department. Had she done so, the manager would have attempted to adjust schedules so that claimant would not be required to work with the employee with whom she had a difficult relationship. Nor had claimant exercised the employer’s “open door” policy, and complained to upper management about her workplace situation. Had she done so, the record shows that upper level managers would have attempted to move claimant to another work area, away from the employees who disliked her. A reasonable and prudent person, who suffered from the same type of high blood pressure as claimant did, would have sought assistance from her supervisor and the employer’s upper management in attempting to remove herself from a work environment she disliked before quitting her job.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-63889 is affirmed.

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

DATE of Service: September 7, 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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