

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0927**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 92709). Claimant filed a timely request for hearing. On July 21, 2016, ALJ Frank conducted a hearing, and on July 28, 2016 issued Hearing Decision 16-UI-64643, affirming the Department's decision. On August 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** Claimant provided written argument to EAB. In her argument, claimant objected to the ALJ's decision to exclude testimony from claimant's coworker, Grover, regarding the likelihood of claimant remaining employed after her 90-day corrective action plan ended, and claimant's interactions with the new associate. Claimant's Argument at 4. The ALJ did not err in excluding Grover's testimony on these matters because the record fails to show the information was relevant, as claimant's attorney conceded related facts at hearing. Transcript at 38. Claimant's argument also contained information that was not part of the hearing record, including excerpts from the employer's report of its April 6, 2016 meeting with claimant, and two documents regarding the terms of the employer's early retirement program. Claimant asserted incorrectly in her written argument to EAB that claimant offered the employer's report regarding its April 6, 2016 meeting with claimant at the hearing. The claimant did not offer that document during the hearing and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the new information included in her written argument during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and the portions of claimant's argument that did not include new information when reaching this decision.

**FINDINGS OF FACT:** (1) Perkins Coie LLP employed claimant from November 6, 1996 to May 5, 2016 as a legal secretary.

(2) In 2009, claimant began receiving treatment for symptoms of depression and anxiety including difficulty sleeping, stomach problems, difficulty eating, nervousness and hypervigilance, which she and her physician attributed to stress from her work environment. Claimant “broke down” at work on several occasions, and perceived her work environment as “toxic,” “humiliating,” and “impersonal” because her coworkers were “nasty,” yelled at her, and used foul language. Transcript at 9-10, 19. In 2015, claimant also began receiving counseling from a psychologist for anxiety and depression.

(3) As part of her employment review in June 2015, claimant wrote that she “shouldn’t have to see – seek medical attention to accommodate 90 percent of the outrageous behavior of the rest of the office.” Transcript at 18. In early 2016, claimant told her supervisor at the time that she was receiving treatment from a psychologist due to her work environment.

(4) On April 6, 2016, claimant’s supervisor met with claimant to give her a verbal warning and corrective feedback regarding her conduct at office meetings and interactions with a new associate and other staff members. The supervisor told claimant they would have weekly meetings for the next three months to assess if the relationship between claimant and the new associate improved. Claimant disagreed that she had mistreated the new associate. Due to the needs of the employer’s litigation department, claimant’s supervisor also told claimant the employer was changing claimant’s 7:30 a.m. to 4:00 p.m. schedule to an 8:30 a.m. to 5:00 p.m. schedule, effective April 25, 2016. Claimant agreed to the change but was dissatisfied with it because she believed it would make her commute more difficult.

(5) On April 11, 2016, the employer announced to all of its offices that certain qualifying staff over age 55 could take an early retirement with severance pay. Claimant contacted human resources for information about the early retirement plan. One of claimant’s supervisors contacted claimant and suggested that claimant accept the early retirement plan because the employer would not have to continue with its corrective action plan or document it in claimant’s personnel file if claimant left work.

(6) On April 14, 2016, claimant’s supervisor met with claimant for their first weekly follow-up discussion, and the supervisor became frustrated with claimant when claimant refused to answer the supervisor’s questions or participate in the conversation.

(7) After April 14, 2016, claimant missed several days of work, and her depression and anxiety symptoms worsened such that her psychologist recommended she make daily “check in” calls. Exhibit 1, Menustik Letter. Claimant began taking anxiety medication and her primary care physician and psychologist recommended she leave her job to protect her health.

(8) On April 19, 2016, claimant gave the employer notice that she was leaving work on May 5, 2016 and accepting the terms of the early retirement program.

(9) On April 21, 2016, claimant’s primary care physician began treating claimant for adjustment disorder and acute stress reaction and advised claimant to take medical leave until her employment ended on May 5, 2016. Exhibit 1, Kasik Letter.

(10) Claimant was on medical leave from April 21 until her employment ended on May 5, 2016.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant left work with good cause.

In Hearing Decision 16-UI-64643, the ALJ concluded that claimant quit work without good cause reasoning that claimant's work situation was not grave and, without concluding that claimant's work was making her sick, that claimant had reasonable alternatives to quitting work.<sup>1</sup> We disagree.

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 and depression, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). Thus, the issue in this case is whether a reasonable and prudent person with the characteristics and qualities of an individual with anxiety and depression would have considered the situation so grave that she had no reasonable alternative but to voluntarily leave work when she did.

The record shows claimant's work caused her anxiety and depression to worsen such that she received treatment, including medication, for her conditions. After the April 6 and April 14 meetings, claimant's health conditions became severe enough that her psychologist recommended claimant contact her daily. Moreover, both her primary care physician and psychologist had recommended she quit her job to preserve her health. The ALJ concluded that claimant had the reasonable alternatives of submitting medical documentation to the employer seeking accommodations at work, and requesting medical leave for treatment.<sup>2</sup> We disagree with the ALJ's conclusion that those options were reasonable alternatives to quitting. Instead, EAB concludes that claimant established that she had good cause to quit when she did.

First, claimant had received medical treatment since 2009 for anxiety and depression, and there is no evidence in the record showing claimant or her medical providers had identified a change at work that would address claimant's medical conditions. Instead, claimant's doctor and psychologist recommended claimant quit and seek work in a less stressful work environment. Exhibit 1, Menustik and Kasik Letters. A reasonable and prudent person with the characteristics and qualities of someone with anxiety and depression would have followed her doctors' advice and quit work to preserve her health. Moreover, claimant mentioned her health concerns in a 2015 performance review, and told her supervisor in early 2016 about the mental health problems she was experiencing due to her work environment, and there is no evidence that the employer responded to clarify claimant's needs, request documentation regarding her health conditions, or try to identify a reasonable accommodation.

Second, taking a leave of absence to address claimant's health problems was not a reasonable alternative to leaving work because there is no evidence that a leave of absence would have resolved the working

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<sup>1</sup> Hearing Decision 16-UI-64643 at 4.

<sup>2</sup> *Id.*

conditions that caused or aggravated claimant's health conditions. A leave of absence was unlikely to change claimant's working conditions, and would only postpone the stress claimant experienced. A reasonable and prudent person with the characteristics and qualities of someone with anxiety and depression would not take a leave of absence knowing she would likely return from medical leave to the same working conditions that caused her acute symptoms.

In sum, claimant showed that she had good cause for quitting work when she did, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-64643 is set aside, as outlined above.

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

**DATE of Service:** September 6, 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](http://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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