

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0981

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85101). Claimant filed a timely request for hearing. On August 10, 2016, ALJ Frank conducted a hearing at which the employer failed to appear, and on August 12, 2016 issued Hearing Decision 16-UI-65576, affirming the Department's decision. On August 23, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) City of Portland Bureau of Human Resources employed claimant from June 13, 1996 to June 1, 2016 as a customer service representative for the Portland Water Bureau.

(2) Claimant had migraines, and anxiety and panic disorders that caused her to experience unexpected panic attacks. Claimant was treated for her medical conditions during the final months of her employment.

(3) Throughout the last ten years of her employment, claimant considered her supervisor's treatment of her to be harassment and bullying, which caused her to experience migraines and exacerbated her anxiety and panic disorders.

(4) Claimant followed the employer's procedures to report her supervisor's conduct to the employer, with the assistance of her union. Claimant's union representative told her that it was unlikely the supervisor's treatment of claimant would change. Claimant also filed a claim with the Bureau of Labor and Industries (BOLI) alleging her supervisor mistreated her.

(5) In January 2016, claimant put her name on a transfer list to be moved to a different department with a different supervisor. There were no openings for claimant to transfer to before her employment ended.

(6) During May 2016, the employer gave claimant a five-day suspension from work without pay that claimant considered to be unwarranted. Also during May, claimant felt harassed when the employer contacted claimant during her vacation.

(7) On June 1, 2016, claimant reported to work and began to prepare the information necessary to dispatch meter technicians to restore customers' water. The deadline for claimant to submit the information was 10:00 a.m. While claimant was working to submit all the qualifying customers' information for the meter technicians before the deadline, she received an email from her supervisor stating that claimant had not logged out of the telephone system the previous night. Claimant believed that she had logged out of the system. Claimant sent her supervisor an email asking that she wait until after the 10:00 a.m. deadline to address the matter with claimant. Before 10:00 a.m., claimant saw that her supervisor continued to send emails regarding the telephone system issue, and an email notifying claimant that she was required to attend a disciplinary fact-finding meeting on June 3, 2016 to investigate an incident from mid-June 2016.

(8) After receiving the emails, claimant experienced a panic attack and an outbreak of hives that she attributed to the anxiety induced by the email interruptions she received while she tried to meet the 10:00 a.m. deadline. Claimant left work.

(9) The employer sent claimant a letter of resignation for her to sign on June 2, 2016. Claimant did not sign the letter. Claimant did not return to work after June 1, 2016.

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

The first issue in this case is the nature of the work separation. The Department and the ALJ concluded that claimant voluntarily left work. Claimant argued at hearing that the employer discharged her. Audio Record at 11:31 to 11:36. Claimant asserted that she did not plan to quit her job when she reported to work on June 1, but left work due to the panic attack she experienced. Audio Record at 12:21 to 13:04. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Although claimant did not plan to leave work when she began her shift on June 1, 2016, claimant left work after experiencing a panic attack due to the emails she received while working that morning. Claimant showed an intention to sever the work relationship when she left work before the end of her shift, which the employer apparently construed as her quitting because it sent claimant a letter of resignation the next day. Although claimant contended at hearing that her failure to return to work after June 1 was due to the continuing effects of the panic attack, her contention is undermined by the lack of evidence showing that claimant was willing to work for the employer after June 1 or that the employer did not allow claimant to return to work. The weight of the evidence shows that claimant's work separation was a voluntary leaving on June 1, 2016.

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 a panic disorder, 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 a panic disorder would have considered the situation so grave that she had no reasonable alternative but to voluntarily leave work when she did.

In Hearing Decision 16-UI-65576, the ALJ concluded that claimant quit work without good cause because the supervisor’s emails to claimant on June 1 did not create a grave situation for claimant because they contained appropriate subject matter and claimant had the option of waiting until after her deadline to respond to the emails.¹ The ALJ also concluded that claimant quit without good cause because she had the reasonable alternative of taking time off work until she recovered from her panic attack instead of quitting work when she did.²

Before June 1, 2016, however, claimant attempted to improve her ability to cope with her working conditions by following her employer’s complaint procedures and filing a complaint with BOLI to address the supervisor’s behavior, receiving medical treatment for her medical conditions, and seeking a transfer to another department. Despite those efforts, the record shows that the supervisor’s behavior did not change and claimant was unable to avoid having a panic attack at work on June 1. The record fails to show that continued efforts on claimant’s part to improve her working conditions would not have been futile. No reasonable and prudent person with the characteristics and qualities of an individual with anxiety and panic disorders, and migraine headaches, would have continued to work for an additional period of time in an environment that exacerbated those conditions. Claimant therefore 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-65576 is set aside, as outlined above.

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

DATE of Service: September 21, 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,

¹ Hearing Decision 16-UI-65576 at 4.

² *Id.*

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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