

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1046**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130330). Claimant filed a timely request for hearing. On August 29, 2016, ALJ Vincent conducted a hearing, and on September 6, 2016 issued Hearing Decision 16-UI-66953, affirming the Department's decision. On September 12, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant faxed two separate submissions that EAB received on September 27, 2016 and another that EAB received on September 28, 2016. EAB has treated those submissions as written arguments. Claimant did not certify that any of the submissions were served on the other party as required by OAR 471-041-0080 (October 29, 2006). All of the submissions contained information not presented during the hearing, and claimant did not explain why he was not able to offer that information into evidence at the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider the three submissions or any of the new information contained in them. EAB considered only information received into evidence during the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Fred Meyer Stores, Inc. employed claimant as a meat cutter and assistant manager from April 2, 2010 until May 10, 2016.

(2) Beginning sometime in 2015, claimant began to experience severe anxiety attributable to the workplace. Claimant thought management in the store was creating a record of alleged deficiencies in his work performance as a predicate to discharging him or inducing him to resign. Claimant met with members of the employer's management accompanied by his union representative to address these concerns.

(3) As time passed, claimant consulted with his physician to try to control the symptoms of the anxiety he was experiencing. Those symptoms included severe heart palpitations, high blood pressure and

insomnia. Claimant's physician prescribed lorazepam to calm him when his anxiety became severe and to allow him to sleep. The physician concluded that claimant's anxiety was caused by the workplace environment. Claimant sought medical treatment for his anxiety on several occasions between 2015 and May 2016.

(4) Beginning in approximately early 2016, claimant's concerns in the workplace became pronounced. Claimant had a poor working relationship with a particular wrapper with whom he was required to work in close physical proximity. One day, that wrapper abruptly left the workplace before the end of her shift and later told management she did so because claimant was "mean" to her, had "yelled" at her and she became concerned about her physical safety. Transcript at 22. Claimant had not done what the wrapper accused him of doing. Management spoke to claimant about what the wrapper had said. Claimant thought management did not listen to his account of what had happened or his difficulties in working with the wrapper.

(5) On one occasion, claimant asked a new member of management if he could work overtime to keep current some of the records he was required to maintain. The manager told claimant that he should limit the overtime he sought because the management team was "watching" him. Transcript at 17.

(6) Sometime later, the manager of the store and a human resources representative met with claimant to discuss a list of items on which the employer thought claimant could improve. Claimant perceived that the employer was still attempting to create a record in his personnel file of work-related deficiencies.

(7) During the twelve months following May 2015, claimant took periodic leaves due to recurring severe anxiety symptoms that he was unable to control. Claimant's physician authorized the absences to allow claimant to recover from those anxiety episodes. During this time, claimant's physician suggested he seek other work to preserve his health since it did not seem that time away from work was easing his anxiety. However, claimant hoped he could deal with his anxiety and returned to work after each leave.

(8) In March 2016, claimant had another anxiety attack at work. Claimant experienced heart palpitations so severe and long-lived that he thought he was having a heart attack. With a coworker, claimant went to the employer's on-site pharmacy for assistance. In the pharmacy, claimant used the blood pressure cuff and his blood pressure was measured at 187/178. Lights on the blood pressure machine flashed that claimant's blood pressure was in the danger zone. Claimant saw his physician and he was initially restricted from working for at least one week.

(9) By March 2016, the manager of claimant's store became aware that he "was struggling with something." Transcript at 47. Claimant had been "pretty vocal" with management and coworkers about his belief that he was being mistreated. Transcript at 46. Claimant had also discussed with the store manager that he was concerned about the effects the stress he felt in the workplace was having on his health. Transcript at 51. The store manager told claimant that the employer had counseling and other services that might be of assistance to him. Claimant had discussed with the store manager the possibility of transferring to an on-call meat cutter position so he could work out of a different store. Nothing came of that discussion. Transcript at 50.

(10) On March 25, 2016, claimant had another appointment with his physician. Claimant's physician told him that his periodic leaves did not seem to be effective in dealing with his anxiety symptoms, and

each time he returned to work his anxiety symptoms recurred with greater severity. The physician told claimant that the repetitive recurrence of such severe symptoms was damaging to his health, and it appeared that his symptoms would continue to recur with greater severity. The physician told claimant she “could guarantee” that he was going to have a heart attack or a stroke if he continued to try to work in his current work environment. Transcript at 30, 32. The physician advised claimant that he needed to quit work to protect his health. Transcript at 30, 31, 32.

(11) After March 25, 2016, despite his physician’s recommendation, claimant decided he would try to return to work. Claimant extended the time he was away from work under the physician’s March 2016 restriction by using vacation time he had accrued.

(12) Sometime around May 10, 2016, claimant was scheduled to return to work after his most recent leave due to anxiety. As claimant considered returning to work, “the anxiety kick[ed] in” and he concluded he could not again try to return to work. Transcript at 35. Claimant decided to finally accept the advice of his physician and to quit work. On May 10, 2016, claimant submitted a resignation letter to the employer, stating he was not returning to work. Claimant voluntarily left work on March 10, 2016.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 anxiety with associated physical symptoms, 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 his employer for an additional period of time.

In Hearing Decision 16-UI-66953, the ALJ concluded claimant did not show good cause for leaving work when he did, reasoning principally that claimant had reasonable options that he did not pursue before deciding to quit. The ALJ found that the reasonable alternatives open to claimant included “seeking employment in other departments [in the store] with less stress[,] taking medical leave as needed” or continuing to try to redress them [control or eliminate his symptoms] for a time longer.” Hearing Decision 16-UI-66953 at 3. We disagree.

From claimant’s unchallenged description of the nature, severity and duration of the anxiety symptoms to which he was subjected, it can only be concluded that claimant’s situation was grave. Although claimant was treated by physicians and prescribed anti-anxiety medication, his symptoms were poorly controlled, if at all, and despite taking much time off from work due to anxiety episodes, those episodes continued to return without remission or amelioration. The evidence does not support the ALJ’s view that claimant reasonably might have tried to hang on at work to see if his symptoms would “redress” or spontaneously resolve themselves.

In addition, while the ALJ suggested that claimant could theoretically have pursued a leave of absence in preference to quitting, claimant's physician told claimant that the periodic leaves he had taken during the last year had not been effective in dealing with his anxiety. Finding of Fact 10. Claimant reasonably concluded that taking yet more time away from work in the hope his symptoms could be controlled would be a futile endeavor, particularly when his physician had advised him to leave work since she thought that "it's not going to get any better." In addition, claimant's physician warned him that the health result of subsequent efforts to return to work could be as catastrophic as having heart attack or a stroke. Transcript at 30; *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (leave not generally a reasonable alternative to leaving work if it would not in a reasonably short period of time resolve the issues that gave rise to the grave situation.) As well, while the ALJ suggested claimant should have pursued the alternative of transferring to a department where he would not be subjected to the type of stress that aggravated his anxiety, the ALJ overlooked that claimant did bring up a transfer to his store manager and that discussion led nowhere. Transcript at 50. Also at hearing, the store manager testified only very generally that he thought claimant could have requested a transfer to a different store. Transcript at 49-50. The store manager did not provide any specifics about whether any such alternate jobs for claimant were actually available or if claimant was qualified for them. Transcript at 49-50. Given the vagueness and lack of specificity in the store manager's testimony, there is insufficient evidence in this record to establish that a transfer to a different, less stressful position or store was an actual, concrete and reasonable alternative for claimant. *See Gonzales v. Employment Department*, 200 Or App 547, 115 P3d 976 (2005) (evidence insufficient to show claimant's theoretical transfer to a different job was a reasonable alternative when no evidence that employer actually checked and confirmed that such a job was available and that claimant was qualified and capable of performing that job).

On this record, claimant demonstrated that his circumstances were grave and that, when he left work, he had no reasonable alternative in lieu of doing so. Claimant had good cause for leaving work when he did and he is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-66953 is set aside, as outlined above.

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

**DATE of Service: October 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](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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