

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1158

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 74524). The employer filed a timely request for hearing. On October 10, 2016, ALJ Seideman conducted a hearing, and on October 13, 2016 issued Hearing Decision 16-UI-69129, affirming the Department's decision. On October 17, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Clackamas County employed claimant from January 4, 1999 until July 6, 2016, last as a buyer in its department of procurement services.

(2) Beginning sometime in approximately 2014, claimant began to experience anxiety and migraine headaches that he attributed to the workplace environment and a workload that had "dramatically increased." Audio at ~7:20. Claimant also developed high blood pressure. Claimant's physician diagnosed these conditions and prescribed medication for his anxiety, migraine headaches and high blood pressure. Exhibit 1.

(3) In March 2016, claimant experienced three migraine headaches that were "debilitating." Exhibit 1. Around approximately this time or after, claimant experienced three anxiety attacks. One of those attacks occurred while claimant was at work and required his manager to drive him home. Exhibit 1. One of these attacks occurred shortly after claimant left work for the day, and required him to be transported by ambulance for medical treatment and sedation. Exhibit 1. Claimant dealt with the third anxiety attack without emergency medical intervention. Exhibit 1.

(4) Sometime before approximately May 2016, claimant's father developed stage 4 cancer. Claimant's mother was the father's primary caregiver until around this time, when she needed surgery for carpal tunnel syndrome. After his mother's surgery, claimant needed to care for both his father and his mother. On approximately May 5, 2016, the employer authorized a leave for claimant under the Family Medical

Leave Act (FMLA) to care for his ill parents. The illness of his parents and his caregiving responsibilities exacerbated the stress to which claimant felt as a result of workplace pressures and aggravated his symptoms.

(5) After claimant's FMLA leave was authorized on May 6, 2016, claimant did not work until approximately May 24, 2016, when he tried to resume working. Sometime before claimant's return, the employer adjusted his workload to include only routine, non-demanding tasks to reduce the pressure that he experienced and lessen his symptoms.

(6) After claimant returned to work on approximately May 24, 2016, he remained "overwhelmed" by his workload and perceived his health as "failing." Audio at ~9:15, ~ 11:00. Around this time or shortly before, claimant sought the advice of his physician about how to control the adverse symptoms he attributed to workplace pressures. The physician told claimant he should consider resigning from his job. After May 24, 2016, claimant was away from work for several days, both to care for his parents and due to his own health conditions.

(7) By June 14, 2016, claimant still felt overwhelmed and was unable to control the effects of the workplace pressure he was continuing to experience. Claimant concluded he was unable to "work through it" and could not "hang in there anymore." Audio at ~7:19, ~9:15. On June 14, 2016, claimant submitted a resignation notice to the employer stating that he had "health issues," and even though he was working under a reduced workload, he was unable to handle the "day-to-day stressors" of the job. Audio at ~14:22. Claimant notified the employer he would be leaving effective July 6, 2016.

(8) After June 14, 2016, worked only four of the work days before July 6, 2016. Audio at ~14:32. On July 6, 2016, claimant voluntarily left work.

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 testified he experienced anxiety, migraine headaches and high blood pressure, all of which appear to have been permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

Claimant experienced debilitating symptoms due to workplace conditions, particularly his substantially increased workload, which was exacerbated by stress in his personal life. Notably, claimant's physician had advised that he might need to quit work to relieve the pressure he felt and to ameliorate the symptoms that it caused. The employer did not dispute claimant's testimony about the conditions in the workplace, the gravity of his symptoms or that claimant had tried unsuccessfully for some months to

control the symptoms sufficiently to enable him work, and the employer tried to assist claimant by reducing his workload. Because claimant's testimony was plausible on its face, appeared credible and was uncontested, claimant showed that his situation was grave.

The testimony of the employer's witness, while not challenging the gravity of claimant's symptoms, suggested that claimant might not have pursued reasonable alternatives to quitting before he decided to leave work. In response to questions about how, if claimant's circumstances were truly grave, he was able to work for approximately three weeks after he notified the employer he was leaving, the employer's witness explained that claimant actually worked only four days after he provided that notice and took the remaining days off. Audio at ~14:37. That there was a delay between when claimant gave notice and when he left work did not undercut the credibility of claimant's contentions about the seriousness of his symptoms. The employer's witness also suggested that claimant might have pursued the options of requesting time off to allow him to deal with or recover from his symptoms, or might have requested a medical accommodation. However, claimant's symptoms principally arose from the weight of his workload, even after the employer reduced it, and there is little to suggest that his workload could have been further reduced. Time off, a leave of absence or a workplace accommodation is generally not a reasonable alternative to leaving work when the underlying problem is one of working conditions that are not likely to abate. *See Warkentin v. Employment Department*, 245 Or App 128, 261 P3d 72 (2011) (leave to obtain medical or psychological treatment for the health problems that overwork caused was not a reasonable alternative to quitting because treatment would not remedy the stressful working conditions that caused claimant to become ill, would only postpone claimant's continue experience of stress and, by quitting, claimant was able to avoid the stress altogether). As well, the testimony of the employer's witness suggesting that claimant might have sought a further reduction in his workload or a transfer to a different department or position also was not sufficient to establish that either was a reasonable alternative to claimant's quitting. With respect to claimant's workload, the witness did not testify that a further reduction would have been forthcoming and commented only that at the time claimant quit, his workload was "already pretty light given the comparables of the other buyers," suggesting that the witness thought a further reduction would not help claimant or would not be feasible. Audio at ~16:00. With respect to claimant's possible transfer, the witness testified only that claimant might have requested it and that request "would have been considered if other positions were open with the [employer]." Audio at ~15:47. However, the record failed to suggest that other positions were open, and, generally speaking, an unverified and speculative hypothesis about the existence of an alternative does not make it a reasonable alternative without evidence that the employer was actually able and willing to make that alternative available to claimant. *See Gonzales v. Employment Department*, 200 Or App 547, 115 P3d 976 (2005) (a transfer to a different position was not a reasonable alternative where there was no evidence that such positions were available and no evidence that claimant was qualified, capable and interested in working in that position).

We conclude based on the totality of the circumstances that claimant quit work due to a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would conclude he had no reasonable alternative but to leave work. Claimant therefore had good cause to leave work when he did, and he is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-69129 is affirmed.

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

DATE of Service: October 31, 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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