

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1265

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 154051). Claimant filed a timely request for hearing. On November 1, 2016, ALJ Murdock conducted a hearing, and on November 8, 2016 issued Hearing Decision 16-UI-70767, concluding claimant quit work with good cause. On November 14, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Washington County employed claimant as a human resources analyst from November 1, 2006 to August 5, 2016.

(2) In 2012, claimant was diagnosed with adjustment disorder with depressed moods and anxiety. She was prescribed an anti-depressant to treat her condition. Claimant was subsequently diagnosed with major depressive disorder.

(3) Claimant notified the employer of her health conditions and provided the employer with medical documentation of her conditions and need for time off work. She was approved for medical leave under the Family Medical Leave Act (FMLA) due to her own serious health condition(s) during several successive years and regularly had to use that medical leave.

(4) In January 2015 the employer changed claimant's duties. Claimant previously worked only as the training manager, and the employer added recruitments to her list of duties. Claimant struggled with her new duties and felt overworked because of the workload and because the employer was understaffed.

(5) In approximately March 2015, the employer's staff was reduced further when one employee left and another went on medical leave. In March and April 2015 claimant discussed her concerns about the employer's staffing and workload problems with management, asked for feedback about how she performed her duties, and requested assistance with her duties.

(6) In April 2015, claimant discussed with management her desire to make a lateral transfer back into the training manager position she had held prior to January 2015. In May or June 2015, the employer hired a new staff person to assist with the workload and assume the training duties. Claimant continued to struggle despite the reduced workload, and in June and July 2015 spoke with management again about her struggles with the work and again sought support, suggestions for improving her ability to handle the work, and more staff. The employer's management provided claimant with support and assistance to the extent it could but claimant still struggled to handle the demands of her new duties.

(7) Claimant's struggle with stress, anxiety and depression worsened. Her workload was such that she frequently had to work more than full-time hours, including working on the weekends to complete time-sensitive assignments. She also suffered from poor physical health. She was prescribed another anti-depressant medication to treat her condition. The new medication helped to suppress her suicidal thoughts.

(8) In approximately September 2015, the training manager position became available again and claimant asked the employer to transfer her back to her previous position. The employer refused her request, as it had implemented a policy requiring employees to compete for positions through an application process. Claimant made one effort to compete for a job that would allow her to revert to her previous duties but was not selected for the position. She applied for the job one other time, as well, but withdrew her application before competing because the application process was too stressful. After withdrawing her application on that occasion she immediately had to take several days of medical leave to recover.

(9) Claimant's ability to handle her duties did not improve over time, and her mental health continued to suffer. Claimant cried at work approximately two or three times per week, and cried every day on her way home from work. Although claimant had sought medical treatment and was under a physician's care, she was unable to recover or maintain her mental health. Claimant's physician advised her to reduce her stress levels.

(10) By June 2016, claimant felt unable to continue handling the recruitment duties she had been assigned in January 2015, her efforts to be reassigned to her old training manager duties had not been successful, and the assistance the employer provided based upon her requests did not provide claimant with sufficient relief from her work-related stress or its effect on her mental health. On June 7, 2016, claimant notified the employer that she planned to quit work, and, effective August 5, 2016, claimant voluntarily left work.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work with 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 P3d 722 (2010). Claimant had adjustment disorder with depressed

moods and anxiety and major depressive disorder, which may be considered 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 impairment would have continued to work for her employer for an additional period of time.

The ALJ concluded that "a reasonable and prudent person with the characteristics and qualities of an individual with major depression would have left work under the circumstances, rather than continue to experience a worsening of her health and possibly reaching the point where she might attempt suicide." Hearing Decision 16-UI-70767 at 3. We agree. By the time claimant gave notice of her intent to quit work and resigned, she had been struggling with her duties and worsening depression since January 2015 and none of her efforts or the employer's efforts to relieve claimant's work-related stress levels were successful. No reasonable and prudent person with major depressive disorder whose ability to handle work-related stress was so impaired that she cried at work several times a week and every day on the way home, and experienced suicidal thoughts to the extent that she had to take medication to suppress them would continue working, particularly after her reasonable attempts to resolve the issues causing her stress and worsening depression had been unsuccessful over a twenty-month period. Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-70767 is affirmed.

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

DATE of Service: November 30, 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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