

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1268

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 150427). Claimant filed a timely request for hearing. On November 4, 2016, ALJ Frank conducted a hearing, and on November 10, 2016, issued Hearing Decision 16-UI-71008, affirming the Department's decision. On November 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Club Northwest, a health club, employed claimant as a service desk and pro shop employee from February 15, 2013 to September 14, 2016.

(2) Claimant suffered from intermittent anxiety and panic attacks with which she was diagnosed after beginning work in 2013, and for which she was periodically prescribed medications.

(3) In March 2016, claimant's direct supervisor sent her two emails suggesting that claimant might not be a "good fit" for the job because he believed she did not want to work at the service desk when assigned. Audio Record ~ 7:45 to 9:00. Claimant considered the emails a form of harassment that reflected the supervisor's desire that claimant end her employment.

(4) Shortly thereafter, during a meeting with the general manager, the human resources director, the supervisor and claimant, the supervisor told the general manager that claimant did not want to work at the service desk; claimant believed that the supervisor was trying to get her discharged. Claimant then met with the H.R. director and complained that the emails and the comment had created a hostile work environment for her. The next day, after the H.R. director spoke to the supervisor about claimant's complaint, the supervisor loudly asked a coworker in claimant's presence if she believed the work environment was "hostile", which further upset claimant. After the director investigated claimant's complaint and reviewed the written communications between claimant and the supervisor, the director concluded that both claimant and her supervisor contributed to the strained relationship between them.

(5) In early May, 2016, claimant visited her medical provider who prescribed medication for anxiety and panic attacks she was experiencing regarding work. Claimant did not notify the employer about her medical provider contact or treatment or request a work accommodation based thereon to minimize her stress.

(6) Around May 23, 2016, claimant discussed quitting with the H.R. director over what she perceived the increasingly hostile environment the supervisor had created. To help alleviate the conflict, the director rewrote the pro shop and service desk job descriptions to minimize contact between claimant and the supervisor and offered to let claimant work in the pro shop exclusively. After claimant reviewed the modified job descriptions, she agreed to work at both aspects of the job.

(7) Thereafter, for a time, the conflict between claimant and the supervisor lessened. However, in mid-August, two incidents occurred that upset claimant. First, claimant had asked the supervisor for increased hours during an upcoming employer event. After telling claimant there were none to give her, the supervisor gave two hours to another worker who had been injured and off work and needed income as a result. Second, after claimant left work for a period during one afternoon, the supervisor gave another worker authorization to finish a pro shop display that claimant had been working on. When claimant returned, she noticed that the display had been changed and determined that the supervisor had authorized the change.

(8) On August 31, 2016, claimant complained to the human resources director about the two incidents and told her she was considering leaving because the arrangement between her and the supervisor was “not working.” Audio Record ~ 28:45 to 30:45. The director offered to permit claimant to work only in the pro shop only, where she would have minimal contact with the supervisor. Instead, claimant requested that the employer reorganize the chain of supervision for the pro shop so that there would be no contact between her and the supervisor.

(9) Also on August 31, 2016, the general manager met with claimant and notified her that her reorganization request had been declined and that her only option was to continue to work in the pro shop under the indirect supervision of the supervisor. Claimant then gave the employer two weeks’ notice of her intent to quit. On September 14, 2016, claimant quit work because she was dissatisfied with her working conditions, which required some contact with the supervisor.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had suffered from intermittent anxiety and panic attacks since 2013, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with such 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 the employer for an additional period of time.

Claimant failed to show that a reasonable and prudent pro shop and service desk employee with her anxiety condition, exercising ordinary common sense in the face of her concerns over even minimal contact with her supervisor, would have concluded that her situation was so grave she had no reasonable alternative but to quit work. Claimant did not assert or show that her medical provider recommended that she quit under the circumstances or that she even discussed it with her provider before giving her two week notice. Claimant's pro shop duties may have required more contact with her supervisor than she was comfortable with. Supervision is standard in employment situations, however, and does not cause a reasonable subordinate employee, even one with a controlled anxiety condition who has experienced some past conflict with her supervisor, to quit her job, particularly where the employer has demonstrated a good faith effort to minimize future contact with the supervisor the employee found offensive. At a minimum, a reasonable and prudent employee with claimant's impairment and in her circumstances, interested in remaining employed, would have continued to work in the pro shop with its minimal supervision by the supervisor. In addition, the employee would at least have advised the employer of recent treatment by her medical provider, or consulted with the medical provider regarding a recommendation about continuing employment, before giving two weeks' notice of her intent to quit. On this record, claimant failed to show that no reasonable and prudent person in her circumstances and with her impairment would have taken those reasonable steps and continued to work for the employer for an additional period of time.

Claimant did not have good cause to quit work when she did and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 16-UI-71008 is affirmed.

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

DATE of Service: December 9, 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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