

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1269

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 123336). Claimant filed a timely request for hearing. On November 2, 2016, ALJ Frank conducted a hearing in which the employer did not participate, and on November 7, 2016, issued Hearing Decision 16-UI-70669, affirming the administrative decision. On November 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Hands on Medicine employed claimant as a medical receptionist from November 11, 2015 until August 22, 2016. Claimant's job duties included checking patients in and out of the employer's clinic, scheduling appointments, and making calls to remind patients of their appointments. Claimant worked Monday through Friday. Claimant had disability that resulted from a result of a stroke she had on June 21, 2009.

(2) Sometime during claimant's work week of August 15 through 19, 2016, the employer moved claimant's desk to the back of the office. The new location of claimant's desk separated claimant from other staff members and removed her from the area where she was expected to interact with the patients. Claimant found she was very cold in the new location, and also found that she could not fully perform her job duties. Audio Recording at 12:03, 13:08.

(3) On or about August 17, 2016, claimant met with the employer's interim medical director to complain about the relocation of her desk. The interim medical director told claimant she was "stubborn" and accused claimant of using her disability "to play the victim." Audio Recording at 16:00.

(4) On August 22, 2016, claimant quit her job because she was unable to effectively perform her job due to the new location of her desk, and because she believed the employer was unresponsive to her complaints about the situation.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work without 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).¹

Claimant quit her job after she concluded that the employer would not respond to problems she was experiencing after the location of her desk was changed. The employer had moved claimant’s desk from the area where patients interacted, and placed it in an area where she was separated from patients and other staff members and unable to fully perform her job duties. The difficulties claimant experienced in performing her work constituted a grave situation. When claimant complained about the situation to the employer’s interim medical director, she was told she was being “stubborn” and attempting to take advantage of her disability to “play the victim.” A reasonable and prudent person, whose work station was moved to an area where she could not effectively perform her assigned work and whose attempt to complain about the situation to a high level manager was met with an accusation that she was somehow unfairly using her status as a person with a disability, would conclude that she had no reasonable alternative but to quit her job.

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-70669 is set aside, as outlined above.²

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

DATE of Service: November 29, 2016

¹ A claimant with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h) 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. Although claimant testified that she was disabled as a result of a stroke, the record is devoid of evidence regarding the nature of her disability. We therefore cannot determine whether the disability constituted a permanent or long-term physical impairment. As a result, we have analyzed claimant’s work separation under the general standard in OAR 471-030-0038(4).

² 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, 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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