

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1282

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73806). Claimant filed a timely request for hearing. On October 27, 2016, ALJ Vincent conducted a hearing in which the employer did not participate, and on November 2, 2016, issued Hearing Decision 16-UI-70428, affirming the administrative decision. On November 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a letter from her health care provider which was not offered into evidence at the hearing. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party presenting the information demonstrates that factors or circumstances beyond the party's reasonable control prevented the party from offering the information during the hearing. Because claimant provided no reason why she did not offer the letter from her health care provider at the hearing, her request to have EAB consider new information is denied. EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) From June 11, 2015 until June 8, 2016, Prestige Senior Management employed claimant as a caregiver and medication technician.

(2) Claimant has bipolar disorder for which she has received treatment and medication. During the time she was working for the employer, the medications prescribed by her health care provider were not effective in treating her disorder.

(3) Claimant found her working conditions to be very stressful. At times, claimant was assigned to perform duties other than those of a caregiver or medication technician, such as cooking or cleaning, because the employer's facility was short-staffed. On occasion, one of claimant's supervisors administered medications under claimant's name, even though claimant had had no contact with the medications. Claimant understood this action to be illegal.

(4) When claimant told her supervisors that she was unable to lift patients, she was instructed that she had to lift five people by herself and without assistance. When claimant explained that she could not perform these tasks, she was told that she needed to do the work or lose her job. Audio Recording at 12:40. When claimant asked for more assistance with her work load, she was not given any. Audio Recording at 21:24.

(5) Claimant was unaware that any type of protected leave was available for her that might allow her to take time off from work to receive treatment for her bipolar disorder, and the employer did not tell her about any such leave. Audio Recording at 9:15, 25:21. When claimant asked for time off, the employer gave her a weekend off but indicated that no more leave would be available. Audio Recording at 22:30.

(6) The stress of claimant's work environment caused her to become depressed, to develop a poor attitude about her work, and to become incapable of performing her job duties. Audio Recording at 7:00, 16:47. Claimant regularly cried on the job, and often went home and cried after her work shift ended. Audio Recording at 6:29, 7:00.

(7) On or about June 8, 2016, claimant met with three of her supervisors who accused her of not performing her job duties properly. When claimant said that she had correctly done what was expected of her, the supervisors told her she was lying, and said she needed to do her job or quit. Audio Recording at 20:41. Claimant quit her job because of the stress caused by her working conditions.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that 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 bipolar disorder, 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 that impairment would have continued to work for his employer for an additional period of time.

In Hearing Decision 16-UI-70428, the ALJ found that claimant quit her job because "she could not tolerate the working conditions in her workplace," and concluded that, "This was not a reason that would cause a reasonable and prudent person, even one with claimant's mental or physical medical conditions to quit their job." Hearing Decision 16-UI-70428 at 2. The ALJ also found that claimant had the "the reasonable alternative of continuing to seek assistance from her supervisor." *Id.* We disagree with the ALJ's findings about the nature of claimant's work environment and the alternatives available to her.

Contrary to the ALJ's assertion, the record shows that claimant's working conditions made her depressed, caused her to become so unhappy that she cried both on the job and at home, and also caused

her to become incapable of performing her job. We therefore conclude that claimant faced a grave situation in her workplace. We also conclude that claimant had no reasonable alternative of “continuing to seek assistance from her supervisor.” All of claimant’s attempts to obtain assistance on the job were unsuccessful – she was denied additional help, told she could only have a weekend off when she requested leave, and was also told that no help with lifting patients would be provided. When claimant disputed her supervisors’ charge of inadequate performance, she was accused of lying and told she needed to do her work or leave. Given these circumstances and the attitude of her supervisors, the record shows that it would have been futile for claimant to continue to request help from them. *See Early v. Employment Department*, 274 Or App 321, 360 P3d 725 (2015) (employer’s failure to offer claimant alternatives, when the employer knew claimant was quitting after attempting to resolve problems with her supervisor, suggested there were no alternatives and that further attempts to resolve problems would have been futile.) A reasonable and prudent person with bipolar disorder, who faced the working conditions that claimant experienced and was denied assistance from her supervisors would conclude that she had no 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-70428 is set aside, as outlined above.

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

DATE of Service: December 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. 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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