

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1286

Reversed
Disqualification

PROCEDURAL HISTORY: On September 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84646). Claimant filed a timely request for hearing. On October 27, 2016, ALJ Vincent conducted a hearing, and on November 2, 2016 issued Hearing Decision 16-UI-70420, concluding that 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) Wildhorse Resort & Casino employed claimant, last as an administrative assistant for the cage manager, from October 15, 2014 to August 15, 2016.

(2) In approximately 2013 claimant was diagnosed with anxiety. She was prescribed medication for the condition and generally had some on hand, but, for the two years prior to August 2016, did not take any.

(3) Claimant previously worked for the employer in the finance department. Claimant and some coworkers had difficult relationships. Claimant worked with the human resources department to transfer from her previous position to working for the cage manager.

(4) Claimant and the cage manager sometimes went on walks and laughed together. They addressed each other as “hey, girlfriend” in text messages, and told each other that they “love” working together. Transcript at 24. After claimant transferred to the new position, she told the human resources person she “was very thrilled” and got along with the cage manager “very well.” Transcript at 21.

(5) Claimant developed concerns that despite their usually good working relationship, the cage manager’s behavior toward her was sometimes erratic. Claimant also felt the manager had on at least one occasion argued with her in front of others, but did not report incidents to the employer when they occurred.

(6) In July 2016, the cage manager sent claimant a text message asking her for ibuprofen. Claimant felt uncomfortable because she had a prescription dosage of ibuprofen and felt the manager was asking her

for prescription medication. Claimant gave some of the prescription ibuprofen to the manager and did not mention to the manager or anyone else that she felt uncomfortable doing so at the time.

(7) On August 10, 2016, the cage manager asked claimant to type some information onto a form. Claimant did so and handed the paper back to the manager. She subsequently saw the cage manager shred a document and believed it was the paper she had handed the manager. The manager then asked claimant where the paper was and said claimant had not given it to her. Claimant said she had, and asked if the cage manager had shredded the document. The cage manager denied having done so. Claimant considered the cage manager's response disproportionately angry and left the office. Claimant had a "complete meltdown," experienced an anxiety attack and left work. Transcript at 10, 14.

(8) Claimant subsequently visited her physician's assistant for treatment of her anxiety. The physician's assistant instructed claimant to take her anxiety medication, excused her from work on August 11th and August 12th, and instructed claimant to speak with her again before returning to work for her next shift on August 15th.

(9) Claimant called the human resources person she had previously worked with on her transfer and was "very distraught." Transcript at 21. The human resources person authorized claimant's time off work. Claimant reported that she had an argument with the manager and that the manager "had been trying to get pain medication from her." Transcript at 22. Claimant reported that she thought the cage manager was "a great person" and had "a lot of respect" for her, but "there were days when she felt [the manager] didn't treat her well and that she walked on eggshells. *Id.* Claimant indicated that "sometimes they would have conflict" but "overall she kept referring to how much she liked [the manager] and loved [the manager]." Transcript at 22-23.

(10) The human resources person told claimant she hoped to help resolve claimant's conflict, but also talked about transferring claimant to another position, as they had previously done. The human resources person asked claimant if she wanted to meet and discuss matters with the employer's director, but claimant refused. The human resources person told claimant to come in at 8:00 a.m. on August 15th to meet with her and the cage manager.

(11) The human resources person subsequently investigated the complaints. She determined the cage manager had requested ibuprofen in a dosage available over-the-counter rather than by prescription. She interviewed an employee claimant believed had witnessed the cage manager argue with her, but the employee reported that claimant had been the argumentative one in the incident. She reviewed claimant's text messages, which showed that claimant and the cage manager had a friendly relationship. She spoke with the cage manager, who indicated that she did not realize claimant was upset with her or offended by her behavior, and thought she and claimant could work through their issues.

(12) Over the weekend, claimant experienced additional anxiety attacks. On August 15, 2016, between 7:15 a.m. and 7:30 a.m., claimant went to the workplace and notified the human resource person's secretary that she quit her job. The secretary offered to get the human resources person so that claimant could speak with her, but claimant rejected the offer.

(13) Also on August 15, 2016, claimant called her physician's assistant and said she had a rough weekend. The physician's assistant suggested that claimant leave her position. Claimant returned to the

workplace with the physician assistant's note. Had the human resources person known that about the recommendation that claimant leave her position, she would have recommended claimant take family medical leave, and would have recommended some options that would have let the employer help claimant with her insurance.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant voluntarily left work without good cause, and therefore is disqualified from the receipt of benefits based on this work separation.

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 anxiety, 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 such impairment would have continued to work for her employer for an additional period of time.

The ALJ concluded claimant quit work with good cause "because she felt such severe anxiety because of work-related stress that her medical provider opined that the claimant should leave her job in the interest of treating her medical condition." Hearing Decision 16-UI-70420 at 2. The ALJ reasoned that, under the circumstances, "no reasonable and prudent person with acute symptoms of anxiety would have continued to work an additional period of time after August 15, 2016." *Id.* We disagree.

There is no dispute in this record that claimant's job triggered an anxiety attack on August 10, 2016. Nor is there dispute that claimant underwent medical treatment for her anxiety because of her reaction to the situation at work or that her physician's assistant recommended claimant leave employment because "remaining in her current position will be detrimental." That said, however, the circumstances under which claimant left, as developed by all the evidence at the hearing, do not suggest that no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairment would have continued to work under the circumstances.

As a preliminary note, claimant described circumstances under which she alleged the cage manager yelled at her, used foul language toward her and slammed her hands against a desk. The cage manager credibly denied having done so, and, in at least one other incident, the employer also provided hearsay refuting claimant's allegations that the cage manager acted inappropriately toward her. The evidence as to whether the cage manager acted as claimant alleged is, at best equally balanced. Because claimant has the burden of persuasion in a voluntary leaving case, she has not established that events occurred as she alleged. Additionally, despite claimant's concerns, claimant acknowledged to the human resources person even after the August 10th incident that had triggered her anxiety attack that she had been thrilled to work with the cage manager, they got along very well, she liked and loved her supervisor, and they went for walks and laughed together. At no point did claimant suggest to the human resources person that she believed the relationship was irretrievably broken.

Even if claimant had established that the cage manager behaved inappropriately toward her the outcome of our decision would remain the same. Prior to August 10th, claimant did not complain to either the employer or the cage manager that the cage manager was treating her in an unprofessional manner or that claimant was unable to continue working with the cage manager, and, once she made her complaints clear on August 10th and August 11th she did not give the employer a reasonable opportunity to address or resolve the matter before she quit work. It is also notable that, while claimant's physician's assistant recommended claimant leave work because "remaining in her current position would be detrimental," the recommendation did not suggest that working in a different position for the employer would also be detrimental, and the human resources person had indicated to claimant that transferring to a different position was an option for her given her complaints about the cage manager. The employer also had leave options available for claimant, meaning it is unlikely that she would have been forced to return to work for the cage manager while awaiting transfer to a different position with the employer.

In sum, the issue in this case is whether a reasonable and prudent person with anxiety would quit work after a contentious interaction with a supervisor she professed to otherwise like, love and be "thrilled" to work for, rather than pursuing reasonable alternatives such as trying to repair the relationship or transfer to a different position so she did not have to interact with the supervisor again. We conclude she would not. Because we cannot conclude that no reasonable and prudent person with the qualities and characteristics of an individual with anxiety would have continued to work under the circumstances, we conclude that claimant quit work without good cause. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-70420 is set aside, as outlined above.

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

DATE of Service: December 6, 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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