

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0197

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81308). Claimant filed a timely request for hearing. On January 24, 2017, ALJ Lohr conducted a hearing, and on January 31, 2017 issued Hearing Decision 17-UI-75807, affirming the Department's decision. On February 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: In Hearing Decision 17-UI-75807, the ALJ concluded that although claimant "timely submitted" documents to the ALJ for consideration at hearing, the documents were not admissible because they were "not relevant." Hearing Decision 17-UI-75807 at 1. Claimant testified about portions of the documents at hearing. OAR 471-041-0090(1) (October 29, 2006) provides that EAB may consider information not received into evidence at the hearing if necessary to complete the record. We conclude that the documents submitted by claimant are relevant because they relate in part to claimant's medical condition, and that their admission into evidence is necessary to complete the record in this case. Accordingly, claimant's documents, marked as EAB Exhibit 1, are admitted into the record. Any party that objects to the admission of EAB Exhibit 1 into the record must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090. Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Worksystems, Inc. employed claimant as an accountant from June 1, 2009 to October 7, 2016.

(2) In early September 2015, claimant suffered a heart attack and had surgery as a result. Claimant was off work completely in September and October of 2015, and returned to part-time work in November and December. Claimant's physician released claimant to full-time work in January 2016, but advised him to minimize his stress level at work. Claimant did not inform the employer of his physician's advice to minimize his work stress.

(3) On September 22, 2016, claimant received a performance evaluation from his supervisor regarding his work performance from July 1, 2015 through June 30, 2016. The evaluation cited areas of needed improvement, including meeting deadlines and improving his communication and Excel skills. The evaluation was similar to previous evaluations claimant had received, and like the previous evaluations, the employer offered claimant suggestions for improvement including undergoing additional training, which the employer agreed to provide.

(4) Claimant immediately became dissatisfied with the evaluation and believed it was unfair because he had been on medical leave during part of the evaluation period. He concluded his work environment was “hostile” and that he needed to leave his employment to minimize his stress. Transcript at 7. On September 23, 2016, claimant gave his supervisor verbal notice that he was quitting effective October 7, 2016. He declined to give her any reasons for his decision and told her there was nothing she could do to change his mind. On September 26, 2016, claimant gave the employer written notice confirming his intention to quit work, effective October 7, 2016.

(5) On October 7, 2016, the employer’s chief operating officer conducted claimant’s exit interview. During the interview, claimant disclosed that he was leaving because he was unhappy with his recent performance evaluation. He then declined the chief financial officer’s suggestion that as an alternative to quitting, he commit to “engage” with his supervisor to make necessary improvements. Transcript at 31. Before quitting, claimant did not advise the employer that he was leaving because he believed his work environment was “hostile” or that he needed to minimize his stress to protect his health.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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 suffered a heart attack in 2015, with resulting surgery, likely 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 his employer for an additional period of time.

Claimant asserted at hearing that he left work, in part, because his work environment was “hostile.” Claimant supported his assertion by explaining that his last evaluation had been unfair because he missed at least two months of work due to his heart attack, surgery and recuperation and that his absence from work, together with additional responsibilities he had been given regarding supervising temporary workers, made it difficult for him to meet unspecified deadlines. Transcript at 7-9. However, the employer denied that claimant’s absence contributed to his difficulty with the deadlines involved, and claimant did not dispute that he did not bring up his concerns during his evaluation meeting or that he rejected the chief financial officer’s suggestion that as an alternative to quitting he simply commit to

making necessary improvements by engaging in a work plan to be formulated by his supervisor. Transcript at 26-27.

A hostile environment at work can, under some circumstances, amount to good cause to quit a job. *See McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to “sacrifice all other than economic objectives and . . . endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”). However, on this record, claimant failed to meet his burden to show that his supervisor’s performance evaluation was “oppressive.” The supervisor testified that the evaluation only identified areas for needed improvement such as time management, communication and increased familiarity with the accounting system and Excel software. Transcript at 26-28. She also testified that she intended to develop a work plan to assist claimant in addressing the perceived deficiencies. Moreover, there was no evidence that the supervisor indicated to claimant that his job was in jeopardy. Under the circumstances described, claimant’s supervisor did what an ordinary and reasonable supervisor would do to correct perceived deficiencies in a valued employee’s work performance.

To the extent claimant quit work to protect his health, claimant failed to show that the employer’s actions created a situation of such gravity that he had no reasonable alternative but to quit when he did. Although there was no dispute that claimant had missed work for at least two months due to his heart attack and subsequent treatment, neither was there any dispute that claimant failed to advise the employer of his doctor’s suggestion that he minimize his stress at work or request any accommodation in that regard. Moreover, claimant did not assert or show that his physician ever advised him to quit work and the letter from his physician admitted as EAB Exhibit 1 does not indicate that the physician had ever made such a suggestion to claimant.

In sum, claimant failed to show that no reasonable and prudent accountant with the characteristics and qualities of an individual with his medical impairment, in claimant’s circumstances, would have cooperated with his supervisor to improve his overall work performance, advised the employer of his physician’s advice to minimize his job stress, or both, and continued to work for the employer for an additional period of time. Accordingly, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-75807 is affirmed.

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

DATE of Service: March 15, 2017

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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