

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0215

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112606). Claimant filed a timely request for hearing. On February 2, 2017, ALJ Seideman conducted a hearing, and on February 10, 2017 issued Hearing Decision 17-UI-76699, affirming the Department's decision. On February 22, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Salem Health employed claimant from June 1, 2009 until June 30, 2016, last as an operations specialist scheduler.

(2) Claimant had high blood pressure, a hormone deficiency and problems with her leg. In approximately early 2016, claimant took a leave of absence from work under the Family Medical Leave Act (FMLA) due to leg issues and to undertake a course of hormone therapy. Sometime before May 2016, claimant returned to part-time work after her leave was over. Sometime before May 2016, claimant developed anxiety. As of May 2016, claimant was taking the medications Clonidine to regulate her blood pressure, Levothyroxine to regulate her thyroid, and Buspar to control her anxiety. These medications had serious side effects for claimant, including heart palpitations, increased heart rate, an unusual scent of self, general feelings of discomfort or illness, unusual reactions to environmental stimuli, emotional reactivity, nervousness, hallucinations, and an impaired ability to concentrate.

(3) On May 25, 2016, claimant spoke to an employer representative about her desire to take some time away from work due to the severity of her anxiety and what she assumed were side effects from the medications she was taking. The representative told claimant that it would be preferable for her to change to "u-status," or an on-call status, rather than pursue a leave of absence. On that day, claimant notified the employer that she was changing from part-time status to "u-status."

(4) On June 1, 2016, one of the employer's schedulers called claimant and told her she would not be called to work through June 8, 2016. On June 7, 2016, the scheduler called claimant again and told her she would not be called to work through the remainder of June. Around June 15, 2016, claimant decreased the dose she was taking of one of her medications to determine if she could better function. The change in dosage did not ameliorate the adverse symptoms that she was experiencing. Claimant considered those symptoms "horrible." Audio at ~25:00.

(5) On June 18, 2016, claimant spoke with an employer representative about taking a leave of absence to allow her to deal with her symptoms rather than remaining on "u-status." Claimant told the representative that she had an appointment with her physician on June 21, 2016. On June 21, 2016, claimant saw her physician and they discussed claimant's symptoms. In response to claimant's question about whether she should quit work, the physician told claimant, it was "totally up to [her]." Audio at ~28:14. However, claimant and the representative never "connected" after claimant consulted with her physician. Audio at ~24:07.

(6) On June 30, 2016, the employer's nurse manager called and left a message for claimant at home advising her that she was required to submit her "mandatories" by midnight that night. Mandatories were reports showing that claimant had completed the yearly training the employer required each employee to complete sometime between June 1 and June 30, 2016. Up to that time, claimant had been under the impression she would have no work to perform in June 2016 and that she was absolved from completing and submitting the required "mandatories." Claimant concluded she was "too whacked out" by medication and her "anxiety level was too much" to allow her to complete the mandatories by midnight. Audio at ~26:42. Claimant felt at that time that she was "not mentally fit to do anything work-related." Audio at ~39:12. Claimant decided to quit work. Claimant did not complete the mandatories.

(7) On July 1, 2016, the employer sent an email to claimant at her work email address telling her that if the employer did not hear from her by July 7, 2016, the employer would move forward to process a work separation. Exhibit 2 at 1. On July 7, 2016, the employer sent a letter to claimant notifying her that it was accepting her voluntary resignation effective immediately.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

In Hearing Decision 17-UI-76699, the ALJ concluded claimant voluntarily left work without good cause and was disqualified from receiving benefits. The ALJ reasoned that since the employer's witness testified that the employer would have "helped claimant work through the process regarding

mandatories and her scheduling” if she had contacted the employer, she left work without pursuing reasonable alternatives to quitting. Hearing Decision 17-UI-7669 at 2. We disagree.

At the outset, claimant’s description of the severity of her physical and mental symptoms, her mental state and her perceived incapacity to perform work that began sometime before claimant quit work was not challenged at hearing. Claimant’s testimony at the hearing appeared sincere and credible. Based on these factors, the preponderance of the evidence shows that claimant faced a grave situation when the nurse manager notified her on June 30, 2016 that she needed to complete and submit her mandatories no later than midnight that day and when claimant knew that her mental state and anxiety would prevent her from doing so. The remaining issue is whether claimant had reasonable alternatives to leaving work when she did.

Although the ALJ thought that one reasonable alternative available to claimant based on the testimony of the employer’s witness was to contact the employer for assistance in completing the mandatories and in “scheduling,” the witness’s testimony was actually that, if claimant had contacted her, she would have “directed” claimant to the human resources department for the “leave of absence process.” Audio at ~38:16. However, claimant had already raised the issue of a leave of absence with an employer representative on May 25, 2016 and no leave had been forthcoming. When claimant was suddenly confronted on June 30, 2016 with the need to complete and submit mandatories by midnight, it is plausible, if not likely, that given her physical and mental problems and her emotional reactivity, she was not able to process fully the options available to her. The employer knew about the physical and mental problems that prevented claimant from completing the mandatories, and did not offer her any alternatives other than completing and submitting the mandatories on June 30, 2016. Given situation, reasonable and prudent person in claimant’s circumstances would likely have quit work in lieu of attempting a task the person knew he or she could not accomplish and which would cause him or her to experience grave adverse mental and physical symptoms.

Claimant had grave reasons to leave work when she did for which there was no reasonable alternative other than to quit. Claimant is not disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 17-UI-76699 is set aside, as outlined above.

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

DATE of Service: March 23, 2017

NOTE: 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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