

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0218

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103759). Claimant filed a timely request for hearing. On January 30, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-75773, affirming the Department's decision. On February 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Propel Insurance employed claimant as an account manager from July 2015 to October 3, 2016.

(2) In June 2016, claimant's grandmother passed away and in early July 2016, claimant's mother was diagnosed with terminal cancer. Shortly thereafter claimant's mother entered hospice care and claimant requested and received leave from the employer under the Family and Medical Leave Act (FMLA) to help care for her mother. Claimant remained on FMLA leave for approximately seven weeks through her mother's death.

(3) In early September 2016, claimant returned to work. Shortly after she returned to work, she began experiencing extreme anxiety, including panic attacks, nightmares and insomnia. She consulted with her medical provider, who diagnosed her with job related stress and prescribed her various medications to attempt to control her symptoms.

(4) Despite the medications, claimant's symptoms remained poorly controlled. She experienced "panic attacks and anxiety at home and at work at all different hours all the time", in addition to continuing nightmares and insomnia, all of which drove her to the verge of a nervous breakdown. Audio Record ~ 7:00 to 8:50. On September 29, 2016, claimant decided she was incapable of working and called in sick. When she went in to work the next day, a Friday, she discussed her condition with her manager, who

was sympathetic but told her he needed her to be there “full time at full speed”, which only increased her stress. *Id.* Over the weekend, she concluded her job and health were at risk and that she “could not do it anymore.” Audio Record ~ 10:00 to 10:50.

(5) On October 3, 2016, claimant told her manager she was resigning. Claimant was unaware she was potentially eligible for an additional four weeks of FMLA leave and her manager did not suggest that as an alternative to quitting.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

In Hearing Decision 17-UI-75773, after finding that claimant was aware that additional leave under FMLA was available to her at the time she quit, the ALJ concluded claimant did not show good cause for leaving work when she did, reasoning that claimant had the reasonable alternative of requesting the additional leave to determine if additional time off would enable her to return to work. Hearing Decision 17-UI-75773 at 3. We disagree.

The record shows that claimant did not consider requesting additional leave, in part, because she was not aware that it may have been available to her when she quit on October 3, 2016. Audio Record ~ 11:00 to 11:45. And, from claimant’s unchallenged description of the nature, severity, duration and cause of the anxiety symptoms she was experiencing when she made the decision to quit, taking such a leave probably would have been futile.

Although between June and September 2016, claimant had experienced the death of her grandmother and observed her mother deteriorate and finally succumb to cancer, it was after she returned to work in September that she was prescribed anti-anxiety medications for “job related stress.” Exhibit 1. Even after taking her medication, her symptoms were so poorly controlled, if at all, that she experienced “panic attacks and anxiety at home and at work at all different hours all the time”, in addition to nightmares and insomnia, all of which drove her to the verge of a nervous breakdown. Audio Record ~ 7:00 to 8:50. Claimant considered her job as an account executive to be highly stressful and the source of her debilitating anxiety. Even after her symptoms began to subside a month after being away from the job, she made a career decision to seek and accept employment in another line of work to avoid the “high stress” of insurance work even though she knew it would result in a large reduction in pay. Audio Record ~ 27:45 to 28:00.

Here, the evidence does not support the ALJ's view that claimant reasonably should have requested and taken an additional four weeks of leave from work to see if her symptoms would subside sufficiently to enable her to return to her job. On this record, claimant demonstrated that given the nature of her job and the severity of her symptoms, such an alternative likely would have been futile and that her circumstances were sufficiently grave that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time.

Claimant left work when she did for good cause and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 17-UI-75773 is set aside, as outlined above.¹

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

DATE of Service: March 22, 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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¹ 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.