

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0271

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101019). Claimant filed a timely request for hearing. On February 9, 2017, ALJ Hall conducted a hearing, and on February 10, 2017 issued Hearing Decision 17-UI-76657, concluding claimant voluntarily left work with good cause. On March 1, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Zipidity Do Dog Resort LLC employed claimant from July 26, 2015 until October 24, 2016 as a kennel assistant.

(2) Claimant provided care for the dogs in the kennel, including feeding, watering, supervising play and cleaning. When claimant began working as a kennel assistant, the manager often assisted claimant during her shift. During the last three months of her employment, claimant began to experience stress from her working conditions because she often had to care for 20 to 30 dogs without assistance. Claimant was concerned the dogs were not being adequately cared for. Also, employees during the shift before claimant's shift created additional work for claimant because they did not keep the kennel clean and free from dog waste. When claimant asked her coworkers for assistance, they refused to help her care for the dogs. There were also conditions that claimant considered dangerous for the dogs, including aggressive dogs, holes that dogs became stuck in, a broken window, and no telephone or first aid supplies.

(3) Claimant experienced chronic stress due to her work conditions that caused her stomach problems. She was not able to discuss her concerns with her family without becoming emotional and crying. She

felt unable to take time off because the manager refused to let her take a day off on one occasion when claimant told the manager she was sick.

(4) Claimant complained repeatedly to the manager about how the other employees failed to care for the dogs, including failing to administer the dogs' medications properly. In response to claimant's complaints, the manager changed the medication procedure, asked other employees to help claimant clean up dog waste, and told claimant to report if the other employees did not complete their duties. Claimant was dissatisfied with the employer's response to her complaints because it did not lessen claimant's responsibilities or improve the conditions for the dogs, and because the other employees complained to the manager if claimant told the manager they had not completed their duties.

(5) On October 22, 2016, claimant reported to work and noticed large amounts of dried blood on the walls of the kennel. Claimant was concerned about the dog involved and because there was a tour for customers scheduled that day, and she did not want them to see the blood. Claimant asked the employee who was on duty why nobody had cleaned the blood off the walls. The employee put in her earphones and ignored claimant. The blood was from a dog in the kennel with a tail injury. The other employee had separated the dog from its companion dog and told claimant to avoid going near the injured dog. Claimant became upset because she thought they were mistreating the dog by not caring for it. Claimant was unable to bandage the dog by herself, and the kennel did not have medical supplies to use for the dog. Claimant called the manager, and the manager told claimant she was unable to go to the kennel at that time. Claimant began to cry, and told the manager, "I can't do this, [manager]. I can't wrestle dogs and get blood everywhere and not [sic] feel that I'm being not good to these animals." Transcript at 18. Claimant left work at that time.

(6) On October 24, 2016, claimant contacted the manager and told her she would not return to work.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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.

Claimant quit work because her workload and resultant inability to adequately care for all the dogs placed in her care caused her to have a high level of stress. The employer's manager alleged that claimant "never really communicated" and did not talk to her about problems she was having at work or state that she was unhappy with her job. Transcript at 8, 9, 33. However, the manager provided contradictory testimony that claimant complained "non-stop" that other employees did not complete their duties. *Id.* We are persuaded that claimant repeatedly told the manager about her concerns about her workload and the lack of assistance from her coworkers. Although the employer made some

changes, the changes did not improve claimant's working conditions. Requesting time off from work was not a reasonable alternative for claimant because, based on her employer's refusal to give her time off in the past, it may not have been granted. Even had the employer given claimant time off work, the stress would have returned when claimant returned to work. Given the effect of claimant's workload on claimant's mental condition, no reasonable and prudent kennel assistant would continue working when doing so caused her unmanageable stress. Claimant had no reasonable alternative but to leave work when she did.

Claimant quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-76657 is affirmed.

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

DATE of Service: March 24, 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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