

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0339

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 102732). Claimant filed a timely request for hearing. On February 28, 2017, ALJ S. Lee conducted a hearing, and on March 3, 2017, issued Hearing Decision 17-UI-78194, affirming the administrative decision. On March 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Pheasant Ridge RV Park employed claimant as manager from September 1991 until September 15, 2016. Claimant's husband also worked for the employer.

(2) Claimant found her work for the employer to be very stressful because she was required to respond to customer complaints about inadequate amenities, *e.g.*, poor internet and cable service, at the RV park she managed. Although claimant spoke with the owner about the complaints she received, the problems that caused the customers to complain were not resolved. Audio recording at 30:35. Because claimant and her husband lived at the RV park they managed, claimant was frequently called upon to address customer concerns during her off-duty hours.

(3) Some time prior to the date of her work separation, claimant had two episodes of shingles; approximately one year before her work separation, she began to experience back problems. Audio recording at 9:56, 12:55. Claimant believed her health problems were either caused or exacerbated by her stressful working conditions. Claimant's doctor recommended that she reduce her stress, but did not specifically recommend that she quit her job. Audio recording at 32:28.

(4) In July 2016, a house that claimant and her husband owned in Arizona was vandalized. The insurance company refused to pay for the damage because the house was not occupied by its owners.

(5) Prior to the date claimant separated from her work for the employer, she was diagnosed with lymphoma. Her doctor arranged for claimant to participate in an experimental treatment program at Cancer Treatment Centers of America (CTCA) in Phoenix, Arizona; the program would pay many of the costs associated with treatment of claimant's cancer. The treatment program in which claimant would participate was expected to last 90 days.

(6) On August 5, 2016, claimant gave the employer's owner a letter of resignation in which she stated that she and her husband were going to Arizona so she could participate in the treatment program for her cancer. In her letter, claimant explained that because her doctor had recommended that she reduce her stress and change her lifestyle, she and her husband would not be returning to work for the employer after her treatment was completed. Audio recording at 25:17. The owner told claimant that he would wait a few days before accepting her resignation, to give claimant more time to think about her situation; in addition, the owner offered to allow claimant to take medical leave while she was participating in the treatment program. Audio recording at 24:00. Claimant subsequently told the owner that she had not changed her mind and would be quitting her job, effective September 15, 2016. Out of concern for claimant's personal circumstances, the owner offered to extend claimant's health insurance benefits for six months.

(7) Claimant's last day of work for the employer was September 15, 2016. At the end of September 2016, claimant and her husband moved to Arizona. On September 29, 2016, began the treatment program at CTCA. Her treatment ended in mid-January 2017.

CONCLUSION AND REASONS: We agree with the ALJ, and conclude that claimant voluntarily left work without 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 she employer for an additional period of time.

Claimant quit her job because she wanted to move to Arizona to receive treatment for cancer, and live in the house she and her husband owned. The program in which claimant participated was one that paid most of the expenses associated with her treatment. Claimant's cancer diagnosis and the need to obtain treatment created a grave situation for her. We agree with the ALJ, however, that she had the reasonable alternative of accepting the employer's offer of medical leave so she could complete a three month treatment program. Claimant and her husband were understandably upset and worried about her cancer diagnosis on the date she submitted her resignation; as she explained in her August 5 letter of resignation, she and her husband were "torn and scared." Audio recording at 25:17. Claimant would

have been in a much better condition to make a decision about her continued employment once her treatment was finished, when she could evaluate her ability and willingness to return to work.

Claimant contended that taking medical leave was not an acceptable alternative for her because of the stress she had experienced in her work for the employer. Claimant asserted that her doctor had told her she needed to reduce her stress level, and that she could only do so if she eliminated the primary stressor in her life – her job. The record shows, however, that claimant never told the employer’s owner that the work she was performing was difficult and causing her stress. When asked by the ALJ why she never asked the owner for help with her work, claimant responded that she was a person who “takes everything upon my shoulders” and that she was not one to “whine and cry.” Audio recording at 14:33. Given the willingness of the employer’s owner to provide claimant with medical leave and health insurance benefits, it does not appear that a request for help on the job would have been futile.

For the foregoing reasons, we conclude that a reasonable and prudent person who was suffering from cancer would not have concluded that she had no alternative but to quit her job, rather than taking a leave of absence to receive treatment. Instead, such a person would have pursued the following reasonable alternatives: postponing a decision about quitting her job until she had finished treatment and asking for assistance in reducing job-related stress before agreeing to return to work. Claimant therefore voluntarily left work without good cause, and she is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-78194 is affirmed.

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

DATE of Service: April 5, 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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