

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0403

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115540). Claimant filed a timely request for hearing. On March 23, 2017, ALJ K. Monroe conducted a hearing, and on March 30, 2017 issued Hearing Decision 17-UI-79995, affirming the Department's decision. On April 4, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record. However, claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision

FINDINGS OF FACT: (1) Independent Environments, Inc. employed claimant as a residential program manager from August 31, 2010 until January 13, 2017. Claimant managed a house in which the residents as well as staff were deaf.

(2) Sometime before or around summer 2015, the employer hired a new executive director. The new executive director began to update many of the employer's pencil and paper forms and hard copy method of document retention to electronic ones. The executive director also implemented other changes to the employer's operations and procedures. Some of the changes impacted the house that claimant managed.

(3) By February or March 2016, claimant was working between 70 and 90 hours each week. Claimant was having difficulty adjusting to the changes that the new executive director was implementing. Around that time, claimant's physician diagnosed claimant as experiencing an "acute stress reaction" and recommended that he take a leave of absence from work due to the stress reaction. Transcript at 9-10. The employer approved a four week leave for claimant. Claimant returned to work sometime in

April 2016. Claimant's physician recommended that he limit the hours he worked each week to 40. Claimant did not see the physician for treatment or monitoring after May or June 2016.

(4) After claimant was back at work, the executive director made further changes to the employer's operations and procedures. Claimant thought that these changes had been decided upon by the executive director without the staff participation that had been customary under the prior executive director. Claimant disliked this "top down" approach and thought the employer was in danger of losing its "people centered" philosophy. Transcript at 15, 19. These changes made claimant unhappy. However, the executive director recognized that staff at the house claimant managed was deaf and that training that staff in new operations and procedures would be more complicated and difficult than with the non-disabled staff at other of the employer's residences. The executive director informed claimant that he did not need to immediately implement many of the newly adopted procedures and approaches at his house due the characteristics of his staff. Also after claimant returned to work, his work hours were usually around 45 hours per week, although sometimes they were as high as 50 hours per week. As of mid-November 2016, claimant was "happy" with the hours he was working and did not feel overwhelmed by them. Transcript at 26.

(5) From April through November 23, 2016, claimant had several discussions with the executive director. Claimant told the executive director that he was concerned about the changes that she was making in the employer's organization. Claimant told the executive director that he disliked the employer's emphasis on electronic record keeping since he felt it detracted from the time he was able to directly serve clients, and he did not think it was efficient or necessary. Claimant told the executive director that he felt pressured by all of the changes. The executive director tried to reassure claimant that the changes were necessary, that she wanted to carry forward the employer's mission of "person centeredness," and that she would continue to support him. Transcript at 38. Claimant never told the executive director that he thought his health was in jeopardy, that he wanted or needed any help, or that he needed to take another leave of absence. Had claimant done so, the executive director would have arranged for other staff or herself to help him because there were "a lot of resources to pull from if he had wanted." Transcript at 39-40. The employer would have allowed claimant to take additional leave if claimant had thought he needed time away from work due to his emotional condition. Transcript at 40. Twice during this span of time, claimant raised his voice to members of the employer's staff or had "outbursts." Transcript at 6, 15.

(6) Sometime in November before November 23, 2016, claimant met with the executive director and another employer representative to discuss "how things were going [for claimant]." Transcript at 26. Claimant told them he was happy with the hours he was working and they were "right around 40 [hours per week]." Transcript at 26, 30. The employer representative asked claimant if he had sufficient staff coverage for Saturdays and Sundays and claimant stated that he did.

(7) On November 23, 2016, claimant attended a manager's meeting at which he misunderstood a topic of discussion and thought the employer was going to eliminate the use of "summary sheets" in the residences. Claimant became upset, raised his voice and strongly objected since about a week earlier the employer had announced that the existing summary sheets in every residence needed updating and claimant had updated those at the residence he managed. Claimant thought his efforts in updating the summary sheets had been wasted. At that meeting, claimant threatened to quit work in front of all the attendees. After the meeting, claimant's behavior was reported to the executive director. The executive

director contacted claimant about the incident. In the course of their discussion, the executive director told claimant that most of the changes she envisioned would be implemented in six months to a year's time. On this day claimant decided he would leave work, but would notify the employer at an appropriate time. Before making this decision, claimant did not consult with his physician or the employer and did nothing to inquire of the employer if there might be any alternatives to quitting.

(8) On December 19, 2016, claimant notified the employer by letter that he was quitting work effective January 14, 2017. As reasons, claimant cited that the work environment was "detrimental to my human health and wellbeing," that those adverse impacts were caused by "unreasonable and inhumane expectations," and that the workplace had become inconsistent with the employer's vision and mission statement. Exhibit 1 at 1.

(9) On January 13, 2017, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

While OAR 471-030-0038(4) sets forth a modified standard for determining if a claimant with a permanent or long-term impairment had good cause to leave work, which includes assessing good cause from the perspective of a reasonable and prudent person with the characteristics and qualities of an individual with such impairment, there is insufficient evidence to apply that modified standard to the facts of this case. Although claimant testified that he had been diagnosed with an "acute stress reaction" in February or March 2016, it is telling that his physician allowed him to return to work after four weeks and he thereafter ceased all medical treatment or monitoring for that condition. Transcript at 9-10, 16. Claimant also testified that he did not know whether the reaction he experienced was a permanent or long-term impairment, and that his physician had not informed of the expected length of time he would experience symptoms from that reaction. Transcript at 13. On this record, it appears that claimant's "acute stress reaction" had abated as of his April 2016 return to work after the leave and had not re-surfaced as of the date he left work, January 13, 2017, since he did not seek medical treatment or evaluation relating to that condition after May or June 2016, as would have been expected if it had re-emerged. Claimant did not meet his burden to show that the modified standard for demonstrating good cause should be used in assessing whether he had good cause to leave work.

Although claimant set forth several reasons for leaving in his resignation letter, at hearing his reasons centered on the stress he experienced as a result of the employer's recent changes to its operations, policies and procedures, the three uncharacteristic "outburst" reactions he had after April 2016, and his concerns that he was again developing an "acute stress reaction" in the workplace. Transcript at 6, 7,

15, 16, 17, 25. With respect to the changes that the employer was implementing, that claimant disagreed with their need or efficacy or did not like them would not constitute a grave reason for leaving work. While claimant contended that adapting to those changes imposed stress on him, particularly when the employer's implementation of the changes was inconsistent or circuitous, claimant did not show that the level of stress he experienced was any more than that which would be reasonably expected due to an alteration in work routine, or that his stress rose to an objectively grave level. That claimant did not consult with his physician to determine if this stress was a precursor to another acute stress reaction also strongly suggests claimant was not concerned that he was relapsing into one. As well, the three "outbursts" that claimant contended he had in the workplace were, alone, insufficient to demonstrate that he was having severely abnormal reactions caused by some serious pathology arising from the workplace. The only one of the three "outbursts" that claimant described, when he reacted negatively to what he thought was the employer's intention to eliminate the use of "summary sheets," while we would not encourage such a reaction, was understandable since claimant thought such sheets were important and very valuable in the residence, and he misunderstood the employer's intention. Transcript at 30-31. Given that claimant did not describe the two other outbursts or their circumstances, it also cannot be concluded that they were emblematic of gravely abnormal reaction to the workplace. It does not appear that any of the reasons that claimant left work were objectively grave and constituted good cause to leave work when he did.

In addition, even if it is assumed that the reasons claimant cited for leaving work were grave, there were reasonable alternatives that he did not pursue before quitting. First, rather than quitting based on his "self-assessment" of his health and level of stress, a reasonable and prudent person who wanted to continue working would have first consulted with a physician, as claimant had previously done before taking his earlier leave, to determine if treatment and/or leave would allow his symptoms to abate sufficiently to enable him to continue to work. Transcript at 18. Second, rather than quitting work due to difficulty adapting to transitions in the workplace, a reasonable and prudent person who wanted to remain employed would have sought assistance from the employer before quitting. Claimant had been talking to the executive director since April 2016 about his unhappiness with changes in the workplace, but had not asked for help or stated anything about an "acute stress reaction." Transcript at 23, 24, 25. The executive director, with apparent sincerity and credibility, testified that she had ample resources available to ease claimant's transition, but she was not aware that claimant needed or would have benefitted from assistance since he had told no one about his psychological reactions to the workplace changes or that he felt unable to perform work tasks. Transcript at 39-40. Claimant did not rebut the executive director's testimony, or show that seeking assistance from the employer would have been futile and had no reasonable possibility of ameliorating the stated circumstances that caused him to leave work. It does not appear, on this record, that claimant exhausted reasonable alternatives of which he was or should have been aware before leaving work and, for this reason as well, did not show good cause for leaving work.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-79995 is affirmed.

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

DATE of Service: May 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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