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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0448

Modified
No Disqualification

PROCEDURAL HISTORY: On March 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause (decision # 115744). Claimant filed a timely request for hearing. On April 6, 2017, ALJ Murdock conducted a hearing at which the employer failed to appear, and on April 11, 2017 issued Hearing Decision 17-UI-80734, affirming the Department's decision. On April 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) JKC Corvallis Automotive, Inc. employed claimant from July 11, 2013 until January 3, 2017 as a parts manager.

(2) When claimant was hired by the employer, claimant's department had three employees. By 2015, there were only two employees in claimant's department. The two employees took over the duties of the third employee. Claimant began taking medication for high blood pressure in 2015.

(3) In March 2016, the second employee in claimant's department quit. The employer did not hire a new employee for two months. In May 2016, when the employer hired a new employee, it assigned claimant the responsibility of training the new employee in addition to performing his other managerial duties. As a result of claimant's increased workload, his stress increased and he began experiencing health problems, including insomnia and higher blood pressure. Claimant's doctor increased claimant's blood pressure medication.

(4) Claimant told his service manager and the general manager that the stress from the additional job duties was causing him to experience higher blood pressure. Claimant asked the service manager and the general manager if the employer could hire a third employee in the service department to reduce claimant's workload and stress level. Claimant's managers told claimant that the employer was not financially able to hire another employee and did not propose or implement any changes to reduce claimant's workload. Claimant's workload and stress level did not improve.

(5) Claimant did not request specific accommodations based on his health condition. He did not ask if he could demote to a position with less responsibility.

(6) On December 23, 2016, claimant gave the employer two weeks' notice that he would be quitting work on January 6, 2017 due to the impact of work on his health. Before January 3, the employer's service manager asked claimant to continue working an additional week to train the person who was replacing claimant. Claimant agreed to continue working until January 13, 2017.

(7) On January 3, 2017, claimant reported to work and worked until his lunch break. During his lunch break, the general manager and office manager discharged claimant, and told claimant to leave work, stating that "[claimant's] services were no longer needed." Audio Record at 6:36 to 6:52.

CONCLUSIONS AND REASONS: Claimant was discharged, not for misconduct, within fifteen days prior to a planned quit for good cause.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. However, ORS 657.176(8) provides that when an individual has notified an employer that he will quit work on a specific date, and the employer discharged him, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that he is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned quit date.

In determining whether a quit was for good cause, "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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had high blood pressure, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

On December 23, 2016, claimant notified the employer he was quitting work on January 6, 2017. Claimant agreed later to continue working until January 13, 2017. The employer discharged him on January 3, 2017, less than 15 days prior to his planned quit date. Absent evidence to the contrary, we infer that the employer discharged claimant because he notified the employer he was quitting work. An employer does not have the right to expect an employee to refrain from quitting. Nor does the record establish that claimant's discharge was due to any other willful or wantonly negligent violation on claimant's part of a reasonable employer expectation. The employer therefore discharged claimant, not for misconduct. The remaining issue is whether ORS 657.176(8) applies to this case because claimant's planned quit would have been without good cause.

In Hearing Decision 17-UI-80734, the ALJ concluded that claimant did not establish that he faced a situation of such gravity that no person with high blood pressure would have continued to work for his employer for an additional period of time.[1] The ALJ concluded that claimant's situation was not grave because a health care professional did not advise him to leave work, his condition was not "unmanageable," his working conditions had not worsened immediately before he quit, and he agreed to work for three weeks after he gave notice to quit.[2] The ALJ also suggested claimant could have requested a medical accommodation or demotion to address his workload and resulting stress level at work.[3] We disagree with the ALJ's reasoning and conclusion.

Claimant's description of the stress of his working conditions and the effect of it on his health was not challenged at hearing. Claimant's testimony at the hearing appeared sincere and credible. The preponderance of the evidence shows that claimant faced a grave situation when he had to perform his own duties, and those of a second employee, while he trained a new employee. The resulting stress from his workload worsened his hypertension and caused him insomnia. That there was a delay between when claimant gave notice and when he left work did not undercut the credibility of claimant's contentions about the seriousness of his symptoms. The remaining issue to determine if claimant had good cause to quit is whether claimant had reasonable alternatives to leaving work when he did.

The ALJ suggested that claimant might have might have requested a medical accommodation.[4] However, claimant's symptoms arose from his heavy workload. Given the employer's trend of increasing, rather than decreasing, claimant's workload, even after claimant told his managers the impact of his workload on his health, there is little to suggest that the employer would have reduced claimant's workload in the future. Time off, a leave of absence or a workplace accommodation is generally not a reasonable alternative to leaving work when the underlying problem is one of working conditions that are not likely to abate. *See Warkentin v. Employment Department*, 245 Or App 128, 261 P3d 72 (2011) (leave to obtain medical or psychological treatment for the health problems that overwork caused was not a reasonable alternative to quitting because treatment would not remedy the stressful working conditions that caused claimant to become ill, would only postpone claimant's experience of stress and, by quitting, claimant was able to avoid the stress altogether). As well, the ALJ suggested that claimant might have sought a demotion.[5] However, the record does not show that other positions were open, and an alternative is not reasonable, generally speaking, without evidence that the employer was actually able and willing to make that alternative available to claimant. *See Gonzales v. Employment Department*, 200 Or App 547, 115 P3d 976 (2005) (a transfer to a different position was not a reasonable alternative where there was no evidence that such a position wad available and no evidence that claimant was qualified, capable and interested in working in that position). For these reasons, we conclude that claimant's planned quit would have been with good cause.

[1] Hearing Decision 17-UI-80734 at 4.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

In sum, claimant notified the employer of his intention to quit work with good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Thus, ORS 657.176(8) does not apply to this case. Because claimant was discharged, not for misconduct, claimant is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-80734 is modified, as outlined above.[6]

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

DATE of Service: May 11, 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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[6] 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.