

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0461

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 151812). Claimant filed a timely request for hearing. On March 30, 2017, ALJ Lohr conducted a hearing, and on April 4, 2017 issued Hearing Decision 17-UI-80195, affirming the Department's decision. On April 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the entire hearing record and claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Ed Wyse Beauty Supply employed claimant from October 3, 2016 until January 31, 2017 as a lead worker.

(2) Beginning in November 2016, claimant learned that other employees in her store were "gossiping" about her and making inaccurate negative allegations about her work performance to claimant's manager, who worked in the corporate office in Washington. In November 2016, claimant complained about this behavior to her manager. Claimant's manager told claimant she supported claimant and to "give them time." Transcript at 11. Claimant met with the employees and told them they needed to modify their behavior. They did not improve their behavior. Although claimant was a lead worker, she did not have authority to discipline other employees.

(3) During December 2016, some of claimant's coworkers continued to gossip about her. On one occasion, a coworker yelled at claimant repeatedly over a two-hour period. Because of her coworkers' behavior, claimant perceived a "very, very high stressful environment" at work, and felt as though she were "walking on eggshells" because she did not know what they were gossiping about or what they might say to her at work. Transcript at 8.

(4) In December 2016, claimant began experiencing high blood pressure that was worsened by work stress. Claimant was pregnant, and her doctor recommended that claimant take more frequent breaks at

work. Claimant's manager accommodated claimant's request for additional breaks and claimant took additional breaks as needed. However, claimant's blood pressure did not improve.

(5) On January 10, 2017, some of the employees who worked with claimant reported to claimant's manager that claimant took excessive breaks and "would be gone for hours" and spent long periods of time in the bathroom. Transcript at 13. They would time claimant's bathroom breaks. Claimant told her manager the allegations were false, and the employer did not discipline claimant based on the allegations. Claimant complained to the manager about her coworkers' behavior and the manager told claimant the employer would "help out." Transcript at 14. However, the employer did not discipline claimant's coworkers for allegedly making false allegations. The manager sent an email to everyone working in claimant's store reminding them of the employer's lunch, break and appropriate use of time policies. Claimant continued to have high blood pressure.

(6) After January 10, 2017, the employees continued to make statements that made claimant uncomfortable at work. They criticized how claimant dressed due to her pregnancy, and discussed race and religion. On January 11, 2017, claimant told her manager about the comments and believed she would discuss the matter with the general manager. The manager did not discuss claimant's comments with the general manager.

(7) Claimant took two week-long periods of medical leave during January 2017, but when she returned each time, claimant felt stress from her working conditions and her blood pressure worsened.

(8) On January 31, 2017, claimant's blood pressure was very high and her doctor recommended that she quit work or risk pre-term labor and danger to herself and her baby.

(9) Claimant was not eligible for paid medical leave due to the length of her employment with the employer. The employer offered claimant an unpaid leave of absence until after her baby was born, but did not make assurances that the employer would improve her working environment while claimant was gone. Claimant was not willing to transfer to another store because the next closest store was a three and a half hour drive from claimant's home, and she was not willing to move. The employer offered to demote claimant, but claimant believed her working conditions would not improve because she would be working with the same employees.

(10) On January 31, 2017, claimant quit her job because of a stressful work environment that adversely affected her health.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that 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.

In Hearing Decision 17-UI-80195, the ALJ concluded that claimant voluntarily left work without good cause. The ALJ reasoned that claimant “did not establish that the work environment created a grave situation,” and that, even if she had, she had the reasonable alternative of reporting her coworkers’ harassing behavior to the employer, and allowing the employer an opportunity to address it, before she quit.¹ We disagree.

Claimant’s description of the severity of her blood pressure was sincere and credible, and not challenged at hearing. Claimant sought treatment from her doctor, took additional breaks at work, and had two leaves of absence before she quit. Her blood pressure issues continued to return when claimant returned to work. Moreover, before claimant quit work, her doctor recommended she quit or risk harm to herself and her unborn baby. Based on these factors, the preponderance of the evidence shows that claimant faced a grave situation when her blood pressure reached a level so high she could not, according to her doctor’s advice, safely continue working. The remaining issue is whether claimant had reasonable alternatives to leaving work when she did.

The ALJ found claimant had the reasonable alternative of reporting her coworkers’ behavior to the employer. The evidence was mixed as to the extent claimant complained to the employer about how her coworkers treated her, with the general manager testifying that it did not know claimant’s health concerns were related to her work conditions until January 31 (Transcript at 30), and claimant testifying that she had reported her concerns to her manager (Transcript at 40-41). The preponderance of the evidence shows, however, that at minimum, claimant told her manager when her coworkers complained about claimant’s breaks, and that, on January 11, 2017, claimant complained again to her manager about her coworkers, with the expectation that she would discuss the matter with the general manager. Despite that claimant could have done more to complain to the employer, the record does not show that, had claimant complained more, the employer would have resolved claimant’s concerns about her coworkers, that resolving the concerns would have reduced claimant’s stress, or that reducing claimant’s stress would necessarily have reduced claimant’s blood pressure or otherwise improved her health to the point at which it would not have been necessary for claimant to stop working.

Nor were the other alternatives that the employer offered claimant reasonable for claimant when she quit. The two week-long leaves of absence claimant took during January 2017 did not resolve her health issues. Nor was a longer leave of absence a reasonable alternative for claimant because it would have been long, unpaid and unprotected under family medical leave laws. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (a protracted and unpaid leave of absence generally is not a reasonable alternative to leaving work due a debilitating medical condition). There was no reasonable transfer option and no evidence that a demotion to work in the same environment would improve claimant’s working conditions.

On this record, claimant demonstrated that her circumstances were grave and that, when she left work, she had no reasonable alternative but to quit. Claimant had good cause for leaving work when she did and is not disqualified from receiving unemployment insurance benefits based on this work separation.

¹ Hearing Decision 17-UI-80195 at 4.

DECISION: Hearing Decision 17-UI-80195 is set aside, as outlined above.²

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

DATE of Service: May 16, 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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² 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.