

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0473

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111610). Claimant filed a timely request for hearing. On April 17, 2017, ALJ Holmes-Swanson conducted a hearing, and on April 18, 2017 issued Hearing Decision 17-UI-81257, affirming the Department's decision. On April 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Prestige Care and Rehabilitation employed claimant as business office manager until January 25, 2017.

(2) A resident who had dementia was allowed to work at claimant's desk. Although that initially did not pose a problem, the resident's condition worsened. He was angry, incontinent and refused to change his garments, yelled, and threw full cans of soda and coffee cups at claimant. Claimant complained, and in October 2016 the employer barred the resident from claimant's office and she kept the door closed.

(3) Claimant thought that would resolve the situation, but things worsened and the resident sat in a public area outside her office door, yelled, knocked on her door, tried to get into her office, and blocked claimant's egress. The resident yelled when he saw claimant and, when angry, threw things at her. Every day felt worse to claimant until she dreaded going to work.

(4) The resident stayed in a public area after October 2016, and the employer could not restrict the resident's movements beyond barring him from the office without infringing on his rights. The employer did not have another location or office from which claimant could work, and did not share claimant's perceptions about the severity of the resident's behavior toward her.

(5) By late December 2016, claimant found the environment unbearable, could no longer tolerate the resident's ongoing anger and confrontational behavior, and notified the employer that she would leave work. Effective January 25, 2017, claimant quit work because she felt afraid of the resident.

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.

The ALJ concluded that although claimant was frightened by a resident with whom she was forced into regular contact, who soiled himself and refused to change his garments, who tried to get into her office, yelled at her and threw coffee cups and soda cans at her, she did not have good cause to quit work because her “situation,” although “difficult[,]” did not “severely affect[] the environment” and was not “sufficiently grave.” Hearing Decision 17-UI-81257 at 2. We disagree. At the time claimant quit, the employer had done all it could to resolve the situation, could not further restrict the resident’s movements without infringing on his rights, had nowhere else claimant could work, and could not do anything to resolve the situation other than try to encourage a resident with dementia to change his behaviors. No reasonable and prudent person would continue to subject herself to an environment in which she was often frightened, yelled at, and repeatedly subjected to the risk of injury from thrown objects, especially when the employer’s attempts to resolve the situation had actually worsened it and there were no other steps short of quitting that claimant could take to avoid the resident who caused her distress. Claimant had good cause for quitting work and is not subject to disqualification from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-81257 is set aside, as outlined above.

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

DATE of Service: May 10, 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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