

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0653

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 82908). The employer filed a timely request for hearing. On May 10, 2017, ALJ Janzen conducted a hearing, and on May 11, 2017, issued Hearing Decision 17-UI-83195, concluding claimant voluntarily left work without good cause. On May 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Redmond Public Schools employed claimant as a special education teacher from August 2016 to February 16, 2017.

(2) Beginning in September 2016, claimant began to experience severe stress attributable to the workplace. Her request to receive assistance to timely complete individualized education programs for students was denied, which required her to work extra hours. After an assistant was assaulted by a special education student that had not yet been assigned to claimant, the principal told claimant, "It was your fault this happened." Transcript at 10. After claimant agreed to volunteer her time to assist in completing a Title 1 study for the district, she learned it would require substantially more time and paperwork than she anticipated, and when she asked the principal for extra time or a "paperwork day", she was denied. Later, after she was unable to timely complete the project, she was told she was "unprofessional and noncompliant." Transcript at 11.

(3) In December 2016, claimant experienced bladder spasms and went to the hospital for treatment. The spasms were medically attributed to work stress and claimant was prescribed medication to treat the spasms.

(4) In January 2017, claimant was assaulted by same student who had assaulted the Title 1 assistant earlier, and the employer's handling of the incident led claimant to believe the employer did little to protect teachers from injury. After she went to a doctor to have her injury examined, the principal criticized her for doing so, telling her the medical visit "wasn't necessary." Transcript at 12.

(5) Over the next month, claimant experienced difficulty sleeping, indigestion and other gastrointestinal issues, an increase in her blood pressure and vomiting. On February 12, 2017, her fiancé told her, “We’re going to the doctor...this job is affecting you so bad.” Transcript at 15. Later that day, she was examined by her physician who prescribed her a course of medication and recommended mental health counseling. He also recommended that she consider changing jobs after concluding that “[claimant’s] efforts to change the stressful elements about her job have failed and seem external to her control.” Transcript at 16.

(6) On February 16, 2017, claimant followed her doctor’s advice and quit work.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

In Hearing Decision 17-UI-83195, after finding that her doctor’s diagnosis of “work-related stress” constituted a “grave situation” for claimant, the ALJ concluded claimant did not show good cause for leaving work when she did, reasoning principally that claimant had reasonable options that she did not pursue before quitting. The ALJ found that the reasonable alternatives open to claimant included “filing a formal complaint regarding any of the issues she had with her school’s principal or explor[ing] a reasonable accommodation for her medical diagnosis.” Hearing Decision 17-UI-83195 at 3. From claimant’s unchallenged description of the nature and severity of the anxiety symptoms she was experiencing, we agree with the ALJ that claimant’s situation was grave. However, we disagree with the ALJ that she had reasonable alternatives to quitting when she did.

While the ALJ suggested that claimant could theoretically have pursued filing a formal complaint in preference to quitting, claimant had already complained, in meetings, to staff, her union representative and finally to the Human Resources representative prior to quitting. Transcript at 22-25. At hearing, the representative testified that although claimant made her complaints known to her, it was her conclusion that “there wasn’t anything that seemed to warrant investigation.” Transcript at 25. Accordingly, filing some sort of a formal complaint prior to quitting likely would have been a futile exercise.

While the ALJ also suggested that requesting a reasonable accommodation for her medical diagnosis was an alternative that claimant could have pursued, claimant had already been denied the use of even one sick day to use as a break, let alone a leave of absence, and at hearing, the human resources representative testified that a transfer would not have been available to claimant. Transcript at 18, 26-27. As the issues appear to have revolved largely around the personalities involved, and it is unlikely that the employer would have been able to do anything to insulate claimant from the principal, more

likely than not pursuing reasonable accommodations in the workplace for her medical condition also would have been futile as whatever accommodations there were would ultimately culminate in claimant returning to the same situation we have already concluded was grave.

On this record, viewed objectively, claimant demonstrated that her circumstances were grave and that when she left work, considering her physical manifestations of stress and doctor's recommendations, she had no reasonable alternative to doing so. Claimant had good cause for leaving work when she did and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 17-UI-83195 is set aside, as outlined above.¹

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

DATE of Service: July 3, 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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¹ 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.