

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0673

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95023). Claimant filed a timely request for hearing. On May 11, 2017 ALJ Sgroi conducted a hearing at which the employer did not appear, and on May 25, 2017 issued Hearing Decision 17-UI-83431, affirming the Department's decision. On June 1, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Douglas County employed claimant as a youth supervisor specialist from March 21, 2017 until approximately March 23, 2017.

(2) Sometime before March 7, 2017, claimant began to experience low energy and extreme fatigue. It became difficult for claimant to work due to those symptoms. On or about March 7, 2017, claimant went to an urgent care medical facility for evaluation of her health status. Claimant explained to the physician she saw that fatigue and lack of energy were significantly interfering with her work performance. After having blood tests performed, the physician diagnosed claimant with hypothyroidism, an underactivity of the thyroid gland resulting in deficient production of thyroid hormones. The physician prescribed levothyroxine, which was intended over time to replace the hormones no longer produced by claimant's thyroid. Claimant understood that, once the levels of levothyroxine she took were adjusted in light of her response to that medication, she could expect that her symptoms from hypothyroidism would substantially or completely abate. The physician claimant saw did not advise her to quit work due to her condition.

(3) From March 8, 2017 through March 21, 2017, claimant continued to work. Claimant continued to experience difficulties in working as a result of low energy and fatigue. Claimant thought that her ability to work would be improved if she had more breaks at work or her work hours were reduced. On a couple of occasions on or after March 7, 2017, claimant sent emails to her supervisor asking for a

reduction in her work hours Claimant did not inform her supervisor that she needed her hours reduced due to a medical condition. As of March 21, 2017, the supervisor had not responded to claimant's request.

(4) During the period of March 8, 2017 through March 21, 2017, Claimant did not ask for a leave of absence from work to determine if rest or the effects of levothyroxine over time would abate her symptoms. Claimant did not do so because she recalled that sometime earlier the employer had sent a communication to all staff stating that the only options available for employees who could not work due to health conditions were to resign or "hope you don't get denied [for a requested leave]" and that leaves of absence would be approved only under "extreme circumstances." Audio at ~ 27:50, ~27:58. Claimant did not believe she had sufficient medical documentation to establish a need for leave. Claimant did not contact the employer's human resources department or her union to determine if any options were available to her to preserve her employment in light of her symptoms.

(5) On March 21, 2017, claimant reported for work and a very loud and "tense" argument between a staff member and a youth took place in claimant's immediate vicinity. Audio at ~ 25:02. The stress generated by the argument exhausted claimant. Claimant did not report for work on March 22 or 23, 2017, but called in sick.

(6) While claimant was away from work she decided that she would leave work because she found work to be exhausting. On approximately March 23, 2017, claimant informed the employer that she was quitting work.

(7) As of May 1, 2017, after she had been taking levothyroxine for two months, claimant felt "much better" than on the day that she quit work. Audio at ~18:10.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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). Claimant had hypothyroidism, which is assumed to be 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 her employer for an additional period of time.

Claimant quit work because of the symptoms she attributed to hypothyroidism interfered with her ability to work. However, the physician who had diagnosed claimant with hypothyroidism did not advise claimant to quit work, even though claimant had told the physician about her difficulties with untreated hypothyroidism. While claimant testified she believed that a lighter work might allow her to continue working, she did not inform her supervisor that the reason she requested reduced hours after March 7, 2017 was due to a medical condition. Without that information, it is plausible that the supervisor did not

immediately respond to claimant's request because he was not reasonably aware of its importance in preserving claimant's employment. As well, although claimant testified that she thought the levothyroxine she was prescribed would ultimately control the symptoms of hypothyroidism, and it significantly improved claimant's functional abilities during the first two months she took it, she did not request a short-term leave of absence from work to see if continued use of the medication would improve her condition to the point that she could effectively function at work. While claimant stated that she was reluctant to seek a leave of absence because the employer had made it known it would approve leaves only under "extreme circumstances," the temporarily debilitating effects from hypothyroidism that claimant was experiencing would appear to constitute such a circumstance. As well, even if claimant did not have sufficient medical evidence in her possession to authorize a leave of absence when she quit, a reasonable and prudent person would have attempted to obtain evidence from a physician or other health care provider to try to preserve employment. A reasonable and prudent person, who wanted to remain employed under the circumstances that claimant described, would have sought a leave of absence to allow the levothyroxine she had been prescribed to reach therapeutic levels, or would have discussed her condition with her supervisor and the employer's human resources department to determine if she had alternatives other than quitting her job. Because claimant did not take the steps of a reasonable and prudent person, she did not show she had not alternative other than to leave work when she did.

Claimant did not meet her burden to show she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-83431 is affirmed.

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

DATE of Service: June 29, 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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