

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0744

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work for good cause (decision # 113918). The employer filed a timely request for hearing. On June 2, 2017, ALJ Amesbury conducted a hearing, and on June 9, 2017 issued Hearing Decision 17-UI-85385, reversing the Department's decision. On June 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) All American Canopies, Inc. employed claimant from June 2015 until February 8, 2017, last as manager.

(2) The employer promoted claimant to the position of manager sometime between July and October 2016. After the promotion, claimant had problems with one of the employees he supervised. Claimant discussed this employee with his supervisor, and the supervisor advised claimant to write the employee up or terminate the employee's employment. Claimant then asked if he discharged the employee, whether the employer would authorize him to spend funds to advertise the position vacated by the employee on internet sites or at job fairs; the supervisor refused to authorize any such funds. As a result, since claimant did not think he would be able to attract a replacement employee absent such advertising, claimant did not discharge the problem employee. Claimant disliked working with the problem employee and it caused him stress.

(3) After claimant became a manager, he did not agree with many of the priorities established by his supervisor. Claimant also was displeased about the lack of management training he received from his supervisor and the overall "lack of support" he received. Transcript at 18. The supervisor's attitude and lack of assistance caused stress to claimant.

(4) In approximately early February 2017, claimant had an appointment with his physician. Claimant told the physician that his mood was "getting pretty bad." Transcript at 13. The physician recommended a "blood panel" to assist in diagnosing claimant. Transcript at 14. The physician did not

recommend that claimant leave work or that any restrictions be imposed on claimant's work activities due the stress he experienced or for any other reasons. Claimant decided he wanted the blood for the blood panel to be drawn in California since he thought it would be more "cost-effective" than in Oregon, despite the three days it would take, and the costs incurred, in travelling to and from California by car.. Transcript at 15, 17. However, the blood draw could have been performed in Oregon if claimant so chose. Transcript at 18.

(5) Sometime before or during the first week of February 2017, claimant concluded that the stress of working for the employer under the circumstances was too great for him to continue. Sometime around February 3, 2017, claimant sent an email to his supervisor stating he thought he was going to quit work in mid-February 2017. Sometime later, the employer's owner sent an email to claimant asking if he would continue working until March 1, 2017. Claimant agreed.

(6) Claimant planned to take February 4 through 11, 2017 off from work because he wanted to visit his family in California, have his blood drawn in California, and wanted time to "get my head straight." Transcript at 16. The employer permitted claimant to take this time off.

(7) On February 8, 2017, claimant sent a text message to his supervisor. The message stated, "I got some news yesterday and I'll be heading down to California today to see more doctors. I won't be coming back in. Please sent my final check to my father's house ***** This is my official notice [that I am quitting]." Transcript at 33. On February 8, 2017, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time. If an individual has a permanent or long-term "physical or mental impairment (as defined at 29 CFR 1630.2(h))", the individual must show that "a reasonable and prudent person with the characteristics and qualities of such an individual, would leave work. OAR 471-030-0038(4).

Although claimant mentioned that he experienced stress and anxiety due to work and that he once in the past had prescription for an antidepressant medication, he provided no information that would allow a determination of whether those self-described symptoms constituted bona fide medical conditions and, if so, the expected duration of the conditions. Transcript at 12-14. Claimant also testified that his anxiety had little impact on his workplace performance. Transcript at 15. There is insufficient evidence in this record to conclude that claimant had a permanent or long-term impairment that would make applicable the modified standard for showing good cause under OAR 471-030-0038(4).

While claimant testified that he did not like his job for a number of reasons, and that he principally quit because his supervisor was not sufficiently "supportive," he did not present evidence showing that any

of the reasons he cited created a situation of such gravity that necessitated that he leave work. Although claimant might have felt some anxiety and stress at work, he testified that his work was not significantly affected by those feelings. Transcript at 15. That claimant did not like his supervisor's priorities or thought that the supervisor was not adequately supportive of him does not, without more, show that his situation was a grave one. Significantly, claimant did not present evidence of, or allude to, any harm that befell him from these supposed attributes of the supervisor or show that these attributes created situations of such urgency for him that a reasonable person would have concluded that he or she needed to leave work. Claimant also did not show that the behavior of the problem employee created a grave circumstance for him. Specifically, claimant did not show that any cognizable harm was caused to him from that employee's behavior and presented no evidence from which it might be inferred that a reasonable person would have left work to escape that employee's behavior. Since claimant failed to show the gravity of the continued presence of the problem employee in the workplace, he also failed to show that the employer's alleged refusal to budget funds that would have enabled him to hire a replacement for that employee was an independently grave circumstance. Finally, since the employer permitted claimant on February 4, 2017 to have a week off to travel to California for the blood draw, that medical need did not give rise to a situation of gravity compelling claimant to leave work. Even if the employer had not allowed claimant to have the week off, since claimant conceded that the blood draw could have been done in Oregon, there also would have been reasonable alternatives to quitting work for the blood draw. Transcript at 18.

The preponderance of the evidence does not show that objectively grave reasons caused claimant to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-85385 is affirmed.

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

DATE of Service: July 21, 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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