

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0768

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153318). Claimant filed a timely request for hearing. On June 21, 2017, ALJ Meerdink conducted a hearing at which the employer did not appear and issued Hearing Decision 17-UI-86266, reversing the Department's decision. On June 26, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted a request to reopen the hearing to allow it to offer evidence because it failed to appear at the June 21, 2017 hearing. EAB construes the employer's request as one to have EAB consider new information under OAR 471-041-0090(2) (October 29, 2006), which permits EAB to consider new information if the party offering that information shows that factors or circumstances beyond its reasonable control prevented the party from offering that information at the hearing. The employer's representative stated in the employer's request that it "intended on calling in" for the hearing, but it had only a small office staff, one employee called in sick that day and, because its office was "short-handed," it did not call in for the hearing. However, the employer's representative did not explain how the absence of one staff member prevented at least one of the two other staff members who were at work that day from participating in and presenting evidence at the hearing or requesting a postponement of the hearing. The employer's request to present new information is therefore denied.

FINDINGS OF FACT: (1) Appleton Properties, Inc. employed claimant as office support from February 24, 2015 until February 2, 2017.

(2) The employer had two owners, a male and a female. The female owner was also the employer's controller. The female owner usually worked out of her home in Nevada, but she interacted regularly by telephone with claimant and other staff members in Oregon. The female owner visited the employer's workplace in Oregon once or twice per year.

(3) Throughout claimant's employment, the female owner was volatile and unpredictable. Occasionally the female owner was congenial. However, without warning or apparent provocation, the female owner often would "yell," "scream" and berate claimant and other staff members for something they had done. Audio at ~13:46. On average, claimant had more than one unpleasant interaction each week with the female owner. Although claimant considered herself to be "pretty tough," the female owner brought her to tears on several occasions. Audio at ~10:06.

(4) Beginning a few months after she was hired, claimant began to experience anxiety as a consequence of the female owner's behavior. Claimant experienced anxiety each morning as she readied herself for work because she did not know how the female owner would behave on any particular day. Claimant sought an evaluation from her primary care physician. The physician prescribed clonidine, an anti-anxiety drug, to claimant. Claimant took clonidine throughout the remainder of her employment to control the anxiety she experienced.

(5) One time during her employment, claimant spoke with the male owner about the female owner's unpredictable behavior and how she treated claimant. Claimant later overheard the male owner telling the female owner over the telephone, in strong words, to stop treating claimant and other employees as she did. However, the female owner's behavior continued despite that conversation.

(6) On February 2, 2017, the female owner was at the employer's Oregon workplace. That day, when claimant arrived for work and before she could reach her desk chair or say anything, the female owner screamed at her without explanation to "get back into the conference room." Audio at ~8:06. The female owner's voice was abrasive, harsh and severe. Claimant told the owner she was not going into the conference room if the owner continued to speak to her in that tone of voice. The owner then instructed the employer's office manager to write claimant up for insubordination and walked away. Claimant sat down in order to calm herself. At that time, claimant concluded she could not work with the female owner any longer, and walked out of the workplace, voluntarily leaving work.

CONCLUSIONS AND REASONS: 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). Because claimant experienced anxiety arising from her employment, was prescribed medication to control this condition and the condition had persisted for over a year, it is assumed for purposes of this decision that the anxiety claimant experienced was 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.

Since the employer did not appear at the hearing and did not establish it was entitled to present additional evidence despite having missed the hearing, there is no evidence in the record contradicting

claimant's description of the female owner's behavior, and the extent to which it was distressing and anxiety-provoking for claimant. From that description and claimant's reaction, it may be inferred that claimant experienced the female owner's behavior as abusive. Claimant took reasonable steps to deal with her anxiety when she sought medical intervention, was prescribed medication to control her anxiety and when she spoke the male owner about the female owner's behavior. Although it appears the male owner attempted to intervene on claimant's behalf and to deter the female owner from further acting out in relation to claimant, his efforts were not successful and apparently did not significantly deter the female owner. On this record, a reasonable and prudent employee who had anxiety, like claimant, would have concluded that the female owner's continued unpredictable and abusive behavior, which the male owner had been unable to discourage and which exacerbated her symptoms of anxiety despite the medication she was taking, created a grave situation to which she had no alternative but to leave work.

Claimant had good cause to leave work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-86266 is affirmed.

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

DATE of Service: July 26, 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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