

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0771

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 150333). Claimant filed a timely request for hearing. On June 8, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-85218, affirming the Department's decision. On June 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Southern Oregon Aspire, Inc. employed claimant as a direct support professional for adults with developmental disabilities from October 7, 2013 to March 30, 2017.

(2) At all relevant times, claimant had HIV and fibromyalgia. She had memory and recall issues related to HIV. She also had a vitamin deficiency for several months that made her experience severe fatigue.

(3) Claimant felt mistreated by her manager. For example, claimant thought she was permitted to report to work early until the manager confronted her in front of others and told her she was not, which caused claimant to feel degraded. Over time, claimant felt her manager was dissatisfied with all of her work.

(4) Claimant had several "heart to hearts" with the manager about how the manager's behavior caused her to feel.¹ Those conversations involved tears and ended with hugs. Claimant felt as though the situation might improve after them, but it did not. Claimant also discussed her concerns about the manager with the employer's assistant director. Unbeknownst to claimant, the employer coached and counseled the manager as a result. Claimant thought about transferring to a different location to work under a different manager but opted not to because the nearest location was too far for her to commute.

(5) On March 29, 2017, claimant planned an outing to a superstore and grocery store with several residents, and planned return to the employer's facility by the residents' 5:00 p.m. dinner time. The manager asked claimant to also drive to a pharmacy, which would add approximately 30 miles to the trip. Claimant did not think the residents would be pleased with the added stop because they did not like

¹ Audio recording at ~ 24:05.

to be out that long, but said she would try to go. By 5:40 p.m. claimant had gone to the grocery store and pharmacy, but not the superstore. The residents told claimant they wanted to go home and eat dinner instead of going. Claimant complied because her job was to be adaptable to the residents' needs, the superstore trip was not urgent, and she could go on March 31st instead.

(6) On March 30, 2017, claimant told her manager that she did not go to the superstore and explained what had happened. The manager repeatedly said that claimant "should have done what I . . . told you to do."² Claimant felt that the manager was getting "worked up," "raising her voice more and more," arguing and "insisting" that claimant should have gone to the superstore the previous evening.³ Claimant told the manager that she did not want to argue and that the manager was making problems out of things that "should have been no big deal."⁴ The conversation ended when claimant had to prepare the residents' lunches and the manager left the room.

(7) After the manager walked away, claimant reflected on her interaction with the manager and thought that the manager was not going to change. Claimant felt that the manager was being abusive and attacking her, and felt as though she might have an anxiety attack. Claimant told the manager, "I can't do this anymore," she "had enough," and was "done," handed the manager her keys, and quit her job.⁵

(8) Prior to leaving work, claimant did not report her concerns to the employer's human resources department. The human resources director had sent newsletters and emails to staff, including claimant, suggesting that staff contact the department and director if they had any concerns. Claimant received and read at least one email before quitting work in which the director indicated he knew that there were some problems at claimant's work location and invited staff, including claimant, to contact him if they had concerns.⁶

(9) Had claimant contacted human resources the employer would have investigated claimant's complaints and helped her and the manager resolve their issues. The employer's management thought highly of claimant's work and did not want her to quit. Between March 30th and April 6th, claimant's manager, the assistant director and the human resources director repeatedly contacted claimant about maintaining her employment. Claimant did not receive the calls or initiate contact with the employer; effective April 6th, the employer ceased efforts to retain claimant as an employee.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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*

² *Id.* at ~ 12:20.

³ *Id.* at ~ 11:55, ~ 12:20.

⁴ *Id.* at ~ 12:50, ~ 14:00.

⁵ *Id.* at ~ 15:30, ~ 18:35.

⁶ *Id.* at ~ 34:35.

Department, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had HIV and fibromyalgia, permanent or long-term “physical or mental impairments” 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 did not establish that she left work because of a situation of such gravity that a reasonable and prudent person with the characteristics and qualities of an individual with her impairments would have no reasonable alternative but to quit. Although the situation with her manager appears to have been uncomfortable and involved the manager starting to raise her voice, the record fails to show that it was so hostile or abusive that claimant had to leave work when she did. It appears that claimant and the manager spoke solely of work-related matters, it does not appear on this record that the manager uttered personal attacks, slurs or threats toward claimant or otherwise impugned her character, and, notably, the supervisor left the room and did not persist in the argument when claimant suggested to the supervisor that she did not want to argue and needed to prepare the residents’ lunches. Given those factors, and that the unpleasant interaction with the manager had ended at the time claimant chose to leave her job, the record fails to show that claimant left work because of an immediately grave situation.

Moreover, under the circumstances claimant described, she had reasonable alternatives to quitting work, such as reaching out to human resources or the assistant director. While claimant initially argued that she was unaware that human resources did more than payroll, claimant later admitted that she received an email from the human resources director indicating that he knew there were problems at claimant’s work location and suggesting that employees contact him about their concerns and problems. The human resources director had also sent other emails and newsletters letting employees know that they could contact human resources. Claimant also had the reasonable alternative of contacting the assistant director before quitting work when she did. Claimant testified she had contacted the assistant director in the past with concerns about the manager, and did not assert or show why it would have been unreasonable or futile to do so on March 30th. Although claimant was not aware that the employer had taken action in response to claimant’s previous complaints to the assistant director, it would not have been unreasonable for claimant to contact the assistant director and explain that she felt she would have to quit work unless the employer did something to address the manager’s behavior toward her, thereby giving the employer the opportunity to correct the situation without claimant leaving work. It is more likely than not on this record that the employer would have investigated claimant’s complaints, had she made them before quitting. The employer’s actions after claimant quit – refusing to accept that she had quit and attempting to contact her about maintaining her employment for seven days after claimant walked away from her job – demonstrate how much the employer valued claimant’s work and indicate that complaining to human resources or the assistant director would have been reasonable, non-futile alternatives to quitting work when she did.

In sum, claimant quit work without good cause. She is, therefore, disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-85218 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, 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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