

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0877

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 145626). Claimant filed a timely request for hearing. On July 13, 2017, ALJ Sgroi conducted a hearing, and on July 20, 2017, issued Hearing Decision 17-UI-88445, concluding claimant voluntarily left work with good cause. On July 24, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record and considered the employer's written argument.

FINDINGS OF FACT: (1) Greater Albany Public School employed claimant as a clerical specialist from March 2006 to April 28, 2017.

(2) Claimant suffered from bipolar disorder (BD) and posttraumatic stress syndrome (PTSS), with which she was diagnosed in 2016, and for which she was prescribed medications. Claimant's symptoms included anxiety, panic, depressive and manic symptoms and lack of impulse control.

(3) In November 2016, claimant applied for and received disability leave from her employer based on her conditions. Claimant returned to work on January 2, 2017, but continued to suffer from the symptoms of her conditions and medications. Claimant's union representative knew her diagnosis and acted as an intermediary between her and the human resources department because she was "struggling" in her position. Audio Record ~ 21:30 to 23:00. The employer transferred claimant to another school within the district but her symptoms of anxiety, panic and lack of impulse control became "1000 per cent magnified" and she felt she was no longer in control. Audio Record ~ 16:00 to 18:00.

(4) After the transfer, claimant took some money from the employer out of impulse. She had never done anything like that before, felt extreme remorse and experienced suicidal thoughts. Subsequently, claimant cooperated with authorities and eventually entered a plea to citation, made restitution and performed community service.

(5) After the theft incident, claimant badly struggled with her symptoms at work while her physicians attempted to find the correct dosage for her medications. She continued to confide in her union representative who eventually advised her to resign, which she did on April 28, 2017. At the time of her resignation, claimant was unaware of any plans the employer had to terminate her employment.

CONCLUSIONS AND REASONS: We agree 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). Claimant was diagnosed and treated for bipolar disorder and posttraumatic stress syndrome, permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for the employer for an additional period of time.

As a preliminary matter, the record shows that although the employer was present at hearing through its representative, it presented no evidence and did not contest claimant’s evidence.

In the present case, claimant suffered from two diagnosed mental disorders that caused her to experience extreme stress and anxiety, panic attacks and lack of impulse control, which eventually led to her taking property from the employer without permission. Taking a medical leave of absence failed to resolve her symptoms before her transfer and the misappropriation of property incident, and her conditions eventually became worse. Claimant’s impulsive taking of the employer’s property caused extreme guilt and exacerbated her symptoms to the extent that it jeopardized her health and her job. In that context, her union representative recommended that she resign, which she did. On this record, viewed objectively, we conclude that a reasonable and prudent person with BD and PTSS would have no reasonable alternative but to follow her union representative’s advice and quit work when she did, particularly when her conditions were not being effectively controlled by medication and medical treatment. No such person with claimant’s impairments would have continued to work for the employer for an additional period of time. Claimant therefore quit work with good cause and is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-88445 is affirmed.

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

DATE of Service: August 17, 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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