

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0901

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84647). Claimant filed a timely request for hearing. On July 10, 2017, ALJ Amesbury conducted a hearing, and on July 11, 2017 issued Hearing Decision 17-UI-87642, affirming the Department's decision. On July 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) First Call Resolution, LLC employed claimant as a customer service representative from February 24, 2017 to May 9, 2017.

(2) At all relevant times, claimant was diagnosed with depression and anxiety.

(3) On May 4, 2017, claimant's male coworker touched claimant's buttocks without claimant's consent. On May 5, 2017, claimant felt too uncomfortable about the incident to go to work. She stayed home from work and reported the incident to the employer. Later that day, she met a human resources person at a coffee shop to discuss the situation. The human resources person told claimant she would investigate, that claimant could have the day off with pay, and that if she wanted the employer would change her team and shift assignments to prevent claimant from having to have further contact with the employee who had touched her. Claimant agreed.

(4) On May 6, 2017, the employer notified claimant that the team and shift changes were complete, and claimant agreed to the new assignment. The employer investigated claimant's complaint and spoke with the male coworker, who admitted that he had touched claimant.

(5) On May 8, 2017, claimant reported to work. Although claimant expected to speak with someone first thing about the employer's investigation, the human resources person did not speak to her until later that day. When they met, the human resources person told claimant the other employee had admitted touching her and had been instructed not to have any contact with claimant. The human resources person also said that the male coworker had offered to apologize to claimant.

(6) Claimant refused the apology, but was not satisfied with the employer's resolution of her complaint. The human resources person asked claimant what she wanted, and claimant said that she felt the male employee should have faced a harsher penalty like suspension or discharge. Claimant was also upset that the human resources person was asking claimant what she wanted to happen, because she felt it was the human resources person's job to know what to do in the situation. The human resources person said that the employer would not fire the male coworker, and the conversation ended shortly thereafter.

(7) Claimant thought about the situation and felt that if she continued to work for the employer she would be condoning the way the employer had handled the male coworker even though she disapproved of the employer's resolution. She was also concerned about continuing to work for the employer given the way they had handled the situation. On May 9, 2017, claimant quit her job, primarily because she did not think the employer had correctly handled her harassment complaint.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that 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 was diagnosed with depression and anxiety, which may be considered permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). Claimant must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Although claimant was understandably uncomfortable after having been harassed at work, the situation was not grave at the time she quit work. Claimant had complained to the employer and the employer had responded in a reasonable matter by investigating, asking her for her input, obtaining her agreement and cooperation with respect to any changes to her assignment, confronting claimant's harasser, taking steps to ensure that the harassment had ended, ensuring that claimant would not have to encounter her harasser in the workplace, and promptly resolving the situation within four days of receiving claimant's initial harassment complaint. There is nothing in this record suggesting that claimant was likely to be the victim of further harassment by that male coworker or anyone else, nor did she suggest that the male coworker or anyone else had threatened her, harassed her further, or that she had been subjected to retaliation for making the harassment complaint. She did not suggest that the employer was non-responsive to employees' complaints, nor did she establish that she had a basis in fact for believing that she might be harassed again in the future if the employer did not suspend or fire her harasser. The fact

that the employer refused to impose the level discipline claimant wanted imposed did not create a grave situation. Considering the totality of the circumstances, a reasonable and prudent person with the characteristics and qualities of an individual with depression and anxiety would not conclude, especially given the employer's prompt attention to and resolution of her complaint, that her situation was so grave that she had to end her employment.

Claimant voluntarily left work without good cause. She is therefore disqualified from receiving unemployment insurance benefits because of her work separation, until she requalifies for benefits by earning four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-87642 is affirmed.

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

DATE of Service: August 22, 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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