

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0959

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 82341). Claimant filed a timely request for hearing. On July 27, 2017, ALJ Amesbury conducted a hearing in which the employer did not participate, and on August 3, 2017, issued Hearing Decision 17-UI-89595, affirming the administrative decision. On August 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Salon Services & Supplies, a wholesale distributor of beauty salon and spa products, employed claimant as a sales consultant from September 1, 2009 until May 31, 2017.

(2) Claimant's job duties included selling beauty salon and spa products to salons. From 2013 through 2015, claimant had the largest growth in sales of any of the employer's consultants, and became "one of four consultants in the whole company in the million dollar club." Exhibit 1 at 1.

(3) In 2016, the employer placed claimant in a "frozen" territory, *i.e.*, one in which she could not acquire new clients but was expected to sell products only to existing clients. In addition, another sales consultant was assigned to work in the same territory to which claimant was assigned. This sales consultant received credit for several accounts that had actually been opened by claimant. On at least three occasions in 2016, claimant was initially denied a bonus, and had to demonstrate to her supervisor that she did qualify for the bonus. Exhibit 1 at 1. Claimant wrote at least three letters to the employer's owners to complain about the difficulty of her situation, but received no response. Audio recording at 45:37.

(4) Claimant was unable to meet the employer's sales goals in a "frozen territory" and became anxious and stressed by her inability to do so. Claimant also found it difficult to satisfy her customers because the employer did not maintain a supply of products that customers wanted, or made mistakes in filling orders customers had placed. Exhibit 1 at 1; Audio recording at 38:23. Claimant found it stressful to

have to repeatedly apologize to her customers for the employer's mistakes or inability to promptly fill orders.

(5) Approximately one year before claimant separated from her employment, her doctor diagnosed her as suffering from anxiety. Audio recording at 29:22. Claimant experienced panic attacks and insomnia due to the stress of her job. Audio recording at 41:16.

(6) On March 9, 2017, claimant received a written warning for failing to meet a "major company initiative" in regard to promoting a particular product. Exhibit 1. On March 13, 2017 claimant received another written warning for her failure to meet "minimum job expectation. Falling below last year's sales for 3 months in a row." Both warnings cautioned claimant that failure to make "immediate and sustained improvement will result in further corrective action up to and including termination of employment..." Exhibit 1. Prior to March 2017, claimant had never been disciplined by the employer.

(7) In approximately March 2017, claimant's supervisor told her that she had to sell a certain quantity of tickets to a show the employer was sponsoring. The supervisor also told claimant that if she did not meet this goal, the employer would have to consider discharging her. Audio recording at 45:37.

(8) On or about April 30, 2017, claimant gave the employer notice that she was quitting her job, effective May 31, 2017. Claimant worked through her notice period and her last day of work for the employer was May 31. Claimant voluntarily left her job because the stressful conditions she was experiencing at work adversely affected her health and her family. Exhibit 1 at 1.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

The ALJ found that claimant quit her job for "a combination of reasons: she was stressed, she felt employer had unrealistic expectations, she felt her working environment was generally unhealthy for her, and she felt she could not take the pressure of potentially being fired." Hearing Decision 17-UI-89595 at 3. The ALJ found that claimant failed to demonstrate a grave situation; although her work environment was "unpleasant" and she felt unfairly treated, "she did not explain why she could not have continued trying to meet employer's expectations or continued to work for employer while looking for a position with a different employer." *Id.* Based on these findings, the ALJ concluded that claimant failed to demonstrate good cause for quitting her job. We disagree.

Based on this record, we conclude that claimant's work environment was more than "unpleasant." Prior to 2016, claimant was a highly successful sales representative. She was unable to maintain this success, however, because in 2016, the employer placed her in a "frozen" territory, with another sales person who received credit for work claimant had done, and in a situation where she had to struggle to receive bonuses she had earned. Under these circumstances, claimant was no longer able to meet the employer's expectations, and the stress of attempting to do so adversely affected her health to an extensive degree; she suffered from anxiety, panic attacks and insomnia. The preponderance of the evidence therefore shows that claimant faced a grave situation because her work had become unhealthy for her. The remaining issue to consider is whether claimant had reasonable alternatives to leaving work when she did.

Although claimant complained to the employer's owners about her situation, the owners never responded. The record therefore shows that any further attempts to seek resolution of her workplace problems with upper management would have been futile. *See Early v. Employment Dep't.*, 274 Or. App. 321, 360 P.3d 725 (2015) (the employer's failure to offer alternatives to a claimant who was quitting after unsuccessfully trying to resolve problems with her supervisor "implicitly suggest[s]" that there were no alternatives and that further attempts to resolve the issue would have been futile). The ALJ's conclusion – that claimant could have continued to work for the employer while looking for another job – was not a reasonable alternative. *Campbell v. Employment Dep't.*, 256 Or. App. 682, 689 n. 2, 303 P.3d 957 (2013) (an employee is not required to look for other work to establish good cause under OAR 471-030-0038(4)). A reasonable and prudent person, who was faced with a work environment that had a significant and adverse effect on her health, and whose attempts to improve her situation had been unsuccessful, would conclude that she had no reasonable alternative but to leave work when she did.

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-89595 is set aside, as outlined above.¹

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

DATE of Service: August 29, 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.

¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits, if owed, may take from several days to two weeks for the Department to complete.

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