

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1039

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141324). Claimant filed a timely request for hearing. On August 15, 2017, ALJ L. Lee conducted a hearing, and on August 18, 2017 issued Hearing Decision 17-UI-90724, affirming the Department's decision. On August 31, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB with her application for review. On September 5, 2017, EAB sent claimant a Notice of Receipt of Application for Review. The notice stated, in part, that a party's written argument will not be considered unless it includes a statement that a copy has been provided to the other parties. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Central Oregon Radiology Association, PC employed claimant from January 2013 to June 29, 2017 as a full time scheduling lead.

(2) Claimant had a congenital heart defect and had been advised by her doctor to avoid extreme stress.

(3) In February 2017, the employer promoted one of claimant's coworkers to be an interim manager. The interim manager supervised claimant. Claimant felt the manager was sometimes unkind and "demeaning [and] belittling" towards claimant in front of claimant's coworkers, but the manager did not say anything "mean" directly to claimant. Transcript at 5, 7. The manager would sometimes interrupt claimant and appear "stressful" when claimant responded to employees' questions, or would criticize claimant's decisions and tell claimant that she needed to get the manager's approval before making certain decisions. Transcript at 5. The manager did not threaten claimant physically or use foul language or demeaning names towards claimant. Claimant did, however, hear the manager refer to other employees as "idiots," and "stupid" when she spoke about them. Transcript at 7.

(4) On March 28, 2017, claimant met with a human resources representative about an unrelated employee matter, and mentioned to the representative that she had concerns about the interim manager. The human resources representative told claimant to wait and see if the manager improved after the employer gave the manager additional training.

(5) After March 28, claimant again heard the manager call employees demeaning names. Claimant told the manager she should not say such things. The manager did not appear to give importance to claimant's comments. Although the new manager's behavior was ongoing, claimant did not complain again to the employer about the manager's conduct. Claimant did not complain to the interim manager's supervisor because the supervisor had not provided claimant with training claimant had requested in the past for herself.

(6) In May 2017, the employer made the interim manager a permanent manager. Also at that time, claimant began to experience higher blood pressure than normal and attributed it to stress caused by the new manager. On May 30, 2017, claimant met with her doctor who also attributed the change in claimant's blood pressure to stress and recommended that claimant try to manage her stress and return to see the doctor if her blood pressure did not improve. The doctor did not prescribe medication for claimant's blood pressure.

(7) On June 16, 2017, claimant told the employer she planned to quit work at the end of June 2017.

(8) After June 16, 2017, claimant met with the human resources representative she had spoken with on March 28. Claimant told the representative that the new manager had called employees "idiots" and "stupid," and explained that her health was suffering due to workplace stress. Transcript at 7. The representative reported the new manager's conduct to that manager's supervisor.

(9) On June 29, 2017, claimant quit work to protect her health from workplace stress caused by the new manager.

CONCLUSIONS AND REASONS: 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 P2d 722 (2010). Claimant had a congenital heart defect, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with this impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with that impairment would have continued to work for her employer for an additional period of time.

Claimant quit work because she experienced higher blood pressure due to workplace stress caused by the behavior of a newly-promoted manager. Claimant showed she faced a grave situation at work by presenting un rebutted evidence that her job was stressful, that her stress increased when the employer

promoted a new manager to act as claimant's supervisor, and the stress caused claimant to experience higher blood pressure. Claimant failed to show, however, that she had no reasonable alternative but to leave work when she did. Claimant could have presented her concerns about the new manager to human resources again or to the manager's supervisor. When claimant told a human resources representative her concerns in March, the representative was not dismissive of claimant's concerns, but recommended claimant wait and see if the manager's conduct improved after she had additional training. Claimant could have returned to the representative to renew her concerns with more detail about the manager or could have notified another supervisor about the impact the manager's conduct had on claimant's health. Claimant could have returned to the doctor and asked for alternatives before concluding that the only way to control her blood pressure was to quit. Claimant could have told the employer about her rising blood pressure and asked for changes to accommodate her condition. The employer showed it could have moved claimant to a different building so she would have limited contact with the new manager while the employer reexamined if the new manager was suited to her position or trained the new manager regarding her interactions with coworkers. Transcript at 38-39, 44. We conclude that a reasonable and prudent person with claimant's medical condition would have pursued reasonable alternatives such as bringing her concerns to the employer again or requesting an accommodation for her medical condition, before quitting her job.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-90724 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 25, 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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