

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1188

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 155331). Claimant filed a timely request for hearing. On September 22, 2017, ALJ Amesbury conducted a hearing, and on September 22, 2017 issued Hearing Decision 17-UI-93095, affirming the Department's decision. On October 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Tillamook Co. Creamery Association employed claimant from August 11, 2015 to April 28, 2017 as a research and development coordinator.

(2) Claimant had a congenital heart defect.

(3) Claimant was dissatisfied with how her supervisor treated her at work. The supervisor regularly gave claimant inconsistent orders, making it difficult for claimant to comply with the supervisor's instructions. Claimant was also dissatisfied with how the supervisor spoke rudely to the technicians in claimant's department, scheduled appointments during claimant's lunchtime, and gave her work that should have been paid at a higher wage. Claimant felt unfairly subjected to discipline at times and feared the supervisor would cause her to be discharged. In April 2016, claimant's supervisor verbally reprimanded claimant in private for "usurping her authority" when claimant reported an imminent safety risk to a different department supervisor after she was unable to contact her own supervisor, who was out of the country. Audio Record at 29:54 to 29:59.

(4) After April 2016, claimant complained about her supervisor's conduct, and the emotional toll it had on her, to the human resources department and her department vice president. Claimant applied for other jobs with the employer and asked to be reassigned to work with a different supervisor. Claimant was not offered another position and human resources and her vice president did not respond to claimant's concerns. In October 2016, claimant complained again about her supervisor and to her vice president.

(5) During 2016, after claimant had complained to the employer about her supervisor, claimant's supervisor told claimant to refrain from questioning directions she gave claimant and how she prioritized projects, and told claimant to stop putting complaints to her in writing, and to make them to her verbally instead.

(6) In February 2017, claimant began to experience episodes of chest pain. Claimant visited a cardiologist three times, who recommended that claimant lower her stress levels to avoid further heart problems. Claimant did not disclose her health concerns to the employer.

(7) To perform her duties, claimant was given information about each research and development project, including each project's urgency. Claimant used that information to prioritize the projects and assign work on the projects, in order of importance, to technicians. In early April, 2017, claimant asked a technician why she was working on a project that claimant did not assign to her when there were other urgent projects pending. The technician told claimant's supervisor that claimant had asked her why she was working on that project.

(8) On April 14, 2017, claimant received two "write-ups" for "questioning authority" and "questioning prioritization" of projects because claimant asked the technician why she was working on a project that had not been given to claimant to schedule. Audio Record at 13:47 to 14:00. Claimant considered the two write-ups to be based on a misunderstanding of her intent when she questioned the technician about her work. Claimant received a third write-up for "removing [herself] from a team-based project without permission," although claimant understood that she had permission to remove herself from the project when she did. Audio Record at 18:49 to 19:04. Claimant requested a written explanation of what the employer meant by the allegations in that write-up, but did not receive one. Claimant requested mediation with anyone who had complained about claimant's conduct at work, and her supervisor refused. Claimant requested an employee improvement plan, and was not given one.

(9) As a result of the three write-ups claimant received, claimant would not be permitted to advance from her position or change jobs with the employer.

(10) On April 28, 2017, claimant quit work because of the impact of her work environment on her health.

CONCLUSIONS AND REASONS: We disagree with the Department and ALJ and conclude claimant quit 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 P2d 722 (2010). Claimant had a heart defect, a permanent or long-term "physical or mental impairment" 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.

The ALJ reasoned that, although claimant had a heart condition and her doctor advised her to reduce her stress for the health of her heart, sought other less stressful positions with the employer, complained repeatedly to the employer, and her doctor had advised her to reduce her stress level for the health of her heart, claimant nevertheless did not have good cause to quit work because she “never presented her full situation to employer’s management” by telling the employer that she had a heart condition affected by work stress, and thus “deprived [the employer] of the opportunity to accommodate [claimant] by offering alternatives to her present situation.” We disagree.¹

Claimant quit work because of the impact of her working conditions on her heart health. A reasonable and prudent person with a heart condition that is affected by stress who had asked repeatedly for reassignment and had just been given three “write-ups” that would prevent her from being reassigned or promoted in the future, would have concluded her situation was grave.

Although the ALJ concluded that claimant had the reasonable alternative of informing the employer about her heart condition or requesting an accommodation based on her health, this is not dispositive on the issue of the gravity of her circumstances or whether there were any reasonable alternatives to her quitting. Claimant complained repeatedly to two different employer representatives beginning in 2016, and the employer’s failure to address the complaints shows an additional complaint would more likely than not have been futile. Second, claimant had already sought other less stressful work with the employer, and not been offered those positions. Third, claimant reasonably believed the employer would no longer reassign or advance her to another position due to the April 14 “write-ups.” A reasonable and prudent person with a heart condition in claimant’s circumstances, who was unable to obtain work with a different supervisor, would have concluded there was no alternative to leaving work when claimant did.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 17-UI-93095 is set aside, as outlined above.

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

DATE of Service: November 14, 2017

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

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

¹ Hearing Decision 17-UI-93095 at 3.

'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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