

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1201

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113526). Claimant filed a timely request for hearing. On October 4, 2017, ALJ Janzen conducted a hearing, and on October 6, 2017 issued Hearing Decision 17-UI-94015, concluding claimant voluntarily left work with good cause. On October 17, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) PeaceHealth employed claimant from December 29, 2014 until July 12, 2017, first in housekeeping and later, in its sterile processing department.

(2) Claimant's partner and daughter are transgender females. In early 2015, claimant told a coworker that her daughter was transitioning to becoming a female. During July 2015, that coworker made comments to claimant that she considered "transphobic," suggested claimant put her child in "conversion therapy," and told claimant he would "pray for her child." Exhibit 2. Claimant complained to her shift leader about the coworker's comments, but the coworker continued to make such comments. Claimant tried to avoid the coworker. In October 2015, during her employee evaluation, claimant complained to her manager about continuing comments from the same coworker. The manager told claimant she needed to "stand up for [her]self" and address the matter herself. Exhibit 2.

(3) In 2016, claimant's partner, who also worked for the employer, began to show outward signs of gender transition. Coworkers asked claimant questions about her partner's gender identity, and claimant attempted to avoid discussions with her coworkers to maintain her partner's privacy. In February 2016, claimant's partner socially transitioned in the workplace to female and coworkers made numerous unwelcome comments to claimant about her partner. Claimant complained to her manager and he stated he would report the matter to the department manager. Exhibit 2. The employer did not address the matter further with claimant.

(4) In March 2016, claimant's shift leader approached claimant and made numerous negative comments about claimant's partner and asked personal questions about her transition process. Claimant complained to her manager, who stated the matter would be addressed. The shift leader continued to treat claimant in an "abrasive" manner. Exhibit 2.

(5) In April 2016, a coworker who saw claimant working with her partner commented to claimant about her when she left the area. Claimant told the coworker that she was her partner, but the coworker continued to make comments about claimant's partner, including that it was "kind of creepy." Exhibit 2. Claimant was upset by the interaction. Claimant complained about the incident to a supervisor. The employer did not follow up with claimant about the incident.

(6) During the next few months, claimant met repeatedly with human resources and her union about coworkers' unwelcome comments and questions regarding her family members' gender identities. Human resources told claimant that it would not engage in training or other action to address the problem. Exhibit 2. Claimant applied for and was accepted to a different position in a different department in January 2017.

(7) On January 18, 2017, claimant walked into the break room where several employees were discussing gender identity issues in what claimant considered to be a derogatory manner. Claimant stated that she had two family members who were transgender. Claimant left the room. Claimant reported the incident to her manager, but he did not address the matter further with claimant. The employer reviewed its anti-harassment policy and gave written warnings to two employees present in the break room that day. Claimant felt as though her manager avoided her after January 18.

(8) On multiple occasions after January 2017, claimant's coworkers made comments to claimant about how they "didn't agree" with her family members' gender identities, and asked questions about their genitals and claimant's sexual orientation. Transcript at 21-22. Claimant complained to human resources about the coworkers' conduct four or five more times after January regarding the coworkers' statements. Claimant asked the employer to provide workplace training regarding discrimination and other gender identity issues. Claimant sought assistance from her union, who attended meetings with her and human resources.

(9) In March 2017, claimant began receiving treatment from a doctor for anxiety and depression caused by workplace stress caused by questions and comments from her coworkers about her family, and the lack of response from the employer when she complained. Claimant told the employer about her medical conditions in May 2017.

(10) On June 9, 2017, claimant was having a conversation with a coworker, who was also a union steward, about poor working environments. Claimant told him that her partner was having difficulty finding work because she is a transgender woman. Exhibit 2. The coworker immediately responded, "If you have a dick you are a man." Transcript at 29. Claimant responded that she did not agree, found the coworker's statement offensive, and had a daughter who was also transgender female. The coworker continued to refer to claimant's partner and daughter using male pronouns. He asked claimant questions about her family members' genitals, spoke of feeling "aggressive" in the past toward a person who preferred a particular gender identity, and expressed a dislike for transgender people. Claimant felt offended by the coworker's statements but was not able to leave the area or successfully change the

subject. Exhibit 2. Claimant complained about the incident to her manager, who told claimant that he and claimant and a different union steward would meet on June 26.

(11) On June 26, 2017, claimant met with her manager with her union steward present. Claimant was disappointed that a human resources representative did not attend the meeting. Claimant reiterated her suggestion that the employer provide training regarding transgender issues in the workplace. She told the manager what her coworker had stated to her on June 9, 2017. At the meeting, claimant's union steward told claimant that she had "opened the door" to coworkers' opinions and comments about her family members' genitals and gender identities by disclosing that they were transgender. Transcript at 8. Claimant told her manager she disapproved of the union steward's comment. Claimant's manager told her he would discuss claimant's suggestions with human resources.

(12) After the June 26, 2017 meeting, claimant noticed that more coworkers stopped talking to her and "gave her the cold shoulder," causing claimant to feel isolated at work. Transcript at 15.

(13) On July 12, 2017, claimant spoke with a union leader who told her the two union stewards had been "spoken to" but that the employer was not going to do further to address claimant's concerns. All employees were provided access to the employer's anti-harassment policy, but the employer did not provide training to all employees that addressed any single protected class, or prejudices and biases commonly faced by transgender individuals.

(14) On July 12, 2017, claimant quit work because of her coworkers' conduct and statements related to her family members' gender identities, the employer's failure to address her concerns, and the resulting impact that the working environment had on her health.

(15) On July 21 2017, after claimant left work, the employer reviewed its anti-harassment policy with the employee who made the statements that offended claimant on June 9, 2017 and gave him a verbal warning that his conduct was perceived as harassing.

CONCLUSIONS AND REASONS: 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). Claimant had anxiety and depression which, based on her description a hearing, appeared to be 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.

Claimant described more than two years of persistent statements and isolating conduct by her coworkers that took a cumulative toll on claimant's mental health. Claimant's working conditions constituted a grave situation for claimant. Claimant repeatedly reported to the employer the conduct and comments

by her coworkers' that she found offensive. Despite claimant's repeated complaints to the employer about comments from her coworkers that she found to be offensive, the employer did not take any effective measures to remedy the apparent lack of sensitivity in the workplace for gender identity issues. Claimant's health suffered as a result of her working conditions. She had anxiety and depression that was aggravated by the continuing offensive comments she regularly heard in her working environment. Based on the employer's limited efforts to respond to claimant's complaints, it was futile for claimant to continue to pursue its grievance process, especially where she encountered bias even from her union stewards. A reasonable and prudent employee with anxiety and depression suffering deteriorating mental health from her working environment would have concluded, as claimant did, that she had no reasonable alternative but to leave work when she did. We thus conclude that claimant voluntarily left work with good cause, and that she is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-94015 is affirmed.

DATE of Service: November 17, 2017

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

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.