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State of Oregon
**Employment Appeals Board**
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

# EMPLOYMENT APPEALS BOARD DECISION
# 2017-EAB-1241

*Affirmed*
*Disqualification*

**PROCEDURAL HISTORY:** On August 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 115646). Claimant filed a timely request for hearing. On October 4, 2017, ALJ R. Frank conducted a hearing, and on October 6, 2017 issued Hearing Decision 17-UI-94036, affirming the Department's decision. On October 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

With her written argument claimant offered new information for EAB's consideration. EAB may consider new information that is not part of the record if, among other things, the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). Claimant argued that she was under extreme stress the day of the hearing because her child was ill and hospitalized. The record does not show, however, that claimant asked that the hearing be postponed because of her circumstances, informed the ALJ that she was under such stress, or asked the ALJ to continue the hearing to another date. Claimant also argued that the ALJ would not let her speak during the hearing. Although the ALJ did interrupt claimant during her presentation of testimony, ORS 657.270(4)(a) requires that the ALJ give "all parties reasonable opportunity for a fair hearing," and OAR 471-040-0025(3) and (5) require that the ALJ "conduct and control the hearing" and exclude irrelevant, immaterial or unduly repetitious evidence. Claimant did not establish that the ALJ interrupted her for purposes other than those he was allowed by law to fulfill, that the ALJ's interruptions deprived her of the opportunity for a fair hearing or otherwise deprived her of due process. For those reasons, claimant has not shown that circumstances beyond her reasonable control prevented her from offering the new information into the hearing record, and her request that EAB consider that information is denied. EAB considered claimant's argument to the extent it was relevant, served to the employer and based upon information in the hearing record.

**FINDINGS OF FACT:** (1) Performant Recovery, Inc. employed claimant as a recovery specialist from August 2005 to July 24, 2017.

(2) As a recovery specialist, claimant's primary job duty was to call debtors by phone and attempt to collect on their debts. Claimant's job was very stressful. Some debtors yelled, were aggressive, used foul language, and called her names.

(3) Claimant had a slim build and a manager made comments to her such as "eat a hamburger." The manager's comments felt like harassment and taunting. In May 2014, the CEO referred to claimant as the "village idiot" on an overhead announcement system in front of all the other employees. Claimant felt embarrassed and humiliated; she felt that her working conditions deteriorated after that incident.

(4) Claimant grew increasingly anxious and was not eating or sleeping properly. In May 2017, claimant's physician diagnosed her with anxiety and prescribed treatment and medication to treat her symptoms. Claimant did not feel that the medication made a difference to her symptoms.

(5) Claimant had concerns about her lead worker. A few weeks prior to July 21, 2017, claimant told human resources that she did not want to work with the lead worker anymore, and human resources assigned claimant to a different team.

(6) Throughout July 2017, claimant had difficulty reaching any debtors by phone and had reached out to her manager for help several times. She thought the manager would sit with her and help her, but her manager did not, and she did not ask the manager to sit with her. On July 21, 2017, claimant cried at her desk because of the difficulties she was experiencing. She felt that her managers were uninterested in her difficulties and were not adequately supporting her. Claimant did not ask human resources for help. Claimant left work at 3:00 p.m. that day.

(7) On July 23, 2017, claimant decided she was going to quit work. She wanted to continue until the end of the month, and reported to work Monday, July 24, 2017 intending to work her whole shift. After approximately two hours, during which she continued to have difficulty reaching debtors by phone and was unable to locate her manager for help, she found out that her manager had gone on vacation. She did not want to ask another manager for help because she felt that manager was confrontational and would not help her. She did not contact human resources. After approximately two hours, she submitted a resignation.

**CONCLUSIONS AND REASONS:** We agree with 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).[1] The standard is objective. *McDowell v. Employment*

[1] Although anxiety might be considered a long-term or permanent impairment under some circumstances, claimant's anxiety was diagnosed in May 2017 and she was no longer receiving treatment for anxiety by August 2017 and was neither long-term nor permanent; we therefore analyzed claimant's voluntary leaving using the standard of a reasonable and prudent person without impairment.

*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.

Although claimant felt that her working conditions deteriorated after May 2014 when a manager called her the "village idiot" in front of all her coworkers, she did not quit work at that time or directly because that incident occurred and instead continued working for more than three years. It was not until the last few weeks of work, during which she had difficulty reaching debtors and felt unsupported by managers, that she decided to quit work, making that the proximate cause of her decision to quit work and the proper focus of the good cause analysis.

There is no dispute on this record that claimant's job was stressful, that claimant developed difficulty dealing with the stress, or that she developed anxiety and cried at work. However, it is not apparent from claimant's testimony how her difficulties the last few weeks she worked were different from the ordinary stressors of her job since 2005, why being unable to reach debtors was so stressful that it caused her to repeatedly cry, or what difference it would have made to her emotions or ability to reach debtors who did not answer their phones had a manager sat down with her or been available to sit down with her. In other words, while claimant's reaction to her working conditions appears to have been emotionally upsetting or painful for claimant, the conditions she described were not, objectively considered, grave.

Even if we had concluded that her circumstances were grave, claimant had reasonable alternatives to quitting when she did. Although claimant wanted a manager to sit down with her, she did not ask a manager to do so, which was a reasonable alternative to quitting work. If claimant's manager was absent, the employer established that other managers were present, and claimant had the reasonable alternative of asking another manager to sit with her and help her. If claimant did not feel another manager would be helpful to her, claimant had the reasonable alternative of speaking with human resources about her concerns; she had complained to human resources just weeks prior to quitting and human resources had been responsive to her complaints and had reassigned her to resolve her complaint. There is nothing on this record suggesting that human resources would not have offered to help claimant with the concerns that prompted her to quit work. Claimant established that the anxiety medication she was prescribed was not working adequately to control her symptoms; although claimant disliked the circumstances that had prompted her to seek treatment for her anxiety, it would not be unreasonable for an individual with uncontrolled symptoms of anxiety to seek additional medical treatment for that condition before concluding she had no alternative but to quit work because of it, making that another reasonable alternative for claimant to leaving work.

Because the circumstances under which claimant quit work were not grave, and she had reasonable alternatives to quitting when she did, we conclude that claimant voluntarily left work without good cause. Claimant therefore is disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 17-UI-94036 is affirmed.

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

**DATE of Service: November 16, 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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