

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1253**

*Affirmed*  
*Request to Reopen Allowed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with the employer without good cause (decision # 121646). Claimant filed a timely request for hearing. On August 22, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 29, 2017. The notice OAH sent to the employer had insufficient first class postage. On August 29, 2017, ALJ Meerdink conducted a hearing at which the employer failed to appear, and on August 30, 2017, issued Hearing Decision 17-UI-91473, concluding claimant voluntarily left work with good cause. On September 5, 2017, the notice of hearing OAH sent to the employer on August 22, 2017 was returned to OAH for additional postage. On September 14, 2017, the employer filed a timely request to reopen the August 29, 2017 hearing. On October 23, 2017, ALJ Meerdink conducted a hearing, and on October 24, 2017 issued Hearing Decision 17-UI-95186 granting the employer's request to reopen and concluding that claimant voluntarily left work without good cause. On October 30, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument with her application for review to EAB. We considered the argument and the entire hearing record when reaching this decision.

**EVIDENTIARY MATTER:** The "Evidentiary Rulings" portion of Hearing Decision 17-UI-95186 was left blank. However, the ALJ identified and admitted Exhibits 1-5 at hearing. They are the Notice of Hearing for the August 29, 2017 hearing that OAH mailed on August 22, 2017 (Exhibit 1), Hearing Decision 17-UI-91473 (Exhibit 2), the employer's request to reopen the August 29, 2017 hearing (Exhibit 3), the returned notice of hearing that OAH sent to the employer that was received by OAH on September 5, 2017 (Exhibit 4), and information regarding mastocytosis (Exhibit 5). Audio Record (October 23, 2017) at 5:13-6:06, 9:03-10:06.

**FINDINGS OF FACT:** (1) Social Venture Partners Portland employed claimant from January 16, 2017 until February 7, 2017 as an office administrator.

(2) Claimant has had mastocytosis since at least 2011. Stress, anxiety and exposure to chemicals can trigger symptoms associated with claimant's condition. Exhibit 5.

(3) Shortly after she began working for the employer, claimant was charged with planning and implementing the employer's move to a new location. Claimant felt stressed by the amount of work associated with the move and because her supervisor was out due to illness and unable to support claimant. The employer successfully completed the move to its new location in January.

(4) Claimant felt stress from the volume of work she had as the office administrator, in part because her duties included administrative duties for the "Encore Fellows" program. Claimant was dissatisfied that she had not received more training for those duties and believed the employer should have had another employee perform the Encore Fellows program duties instead of claimant.

(5) On January 31, 2017, claimant's coworker threw some papers at claimant's desk because he was upset that claimant had not yet set up office recycling. Claimant complained to her supervisor about the incident. The supervisor did not address the matter with the other employee. Claimant did not complain to another employer representative about the incident while employed. Claimant had regular in-person and email contact with the employer's chief executive officer (CEO).

(6) The stress from claimant's workload and working conditions during January 2017 aggravated claimant's mastocytosis condition, causing her to experience inflammation, itching and malaise.

(7) At the end of January 2017, the employer's CEO asked claimant to use a cleaning solution to clean stains from chairs that a business had donated to the employer. The CEO noticed the chairs were not clean enough after claimant cleaned them once, and asked claimant to clean them again. The CEO asked claimant to clean the chairs a third time. Claimant complained to her supervisor about having to clean the chairs again, and the supervisor told claimant the employer would have professionals clean the chairs.

(8) On February 4, 2017, the CEO asked claimant about the status of the chairs, and claimant told the CEO that her supervisor planned to have professionals clean the chairs. The CEO objected and told claimant to clean the chairs. Claimant considered the job duty of cleaning the chairs to be unreasonable because cleaning was not a normal duty for an office administrator, she had already cleaned them twice, and she felt she was being exposed to chemicals that could aggravate her mastocytosis.

(9) Claimant did not tell the employer she had a medical condition or complain that her working conditions affected her health. Claimant did not tell the CEO that using chemicals to clean could aggravate her medical condition. The employer would have made changes to accommodate claimant had she told the employer about her medical condition or asked for an accommodation.

(10) On February 6, 2017, claimant quit work due to the stress from her workload and how it affected her health and because the CEO insisted she clean chairs with a chemical that could aggravate her mastocytosis.

(11) The employer did not receive notice of the August 22, 2017 hearing because OAH put inadequate postage on the envelope in which it was mailed and did not otherwise notify the employer about the hearing until the employer received Hearing Decision 17-UI-91473 after the hearing.

**CONCLUSIONS AND REASONS:** The employer showed good cause to reopen the August 29, 2017 hearing. Claimant voluntarily left work without good cause.

**Request to Reopen Hearing.** ORS 657.270(5) provides that any party may request to reopen a hearing, and that the request may be allowed if the party that requested the hearing failed to appear at the hearing, requested reopening within 20 days after the ALJ's decision was issued, and shows good cause for failing to appear. "Good cause" means "when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." OAR 471-040-0040(2) (February 10, 2012). OAR 471-040-0015 provides that "to afford all parties a reasonable opportunity for a fair hearing, notice of hearing . . . shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the [Department]."

There is no dispute that the employer failed to attend the August 29, 2017 hearing and requested that that hearing be opened within 20 days of the date the ALJ issued a decision in this matter. The only issue is whether the employer showed "good cause" for failing to appear. Exhibit 4, the notice of hearing sent to the employer for the August 29 hearing that was returned to OAH because OAH affixed insufficient postage to the notice when it mailed it to the employer, shows the employer did not receive notice of the hearing as required by OAR 471-040-0015 (August 1, 2004). Given the lack of notice to the employer, the employer's failure to attend the hearing was due to a factor beyond the employer's reasonable control. Thus, the employer's request to reopen was properly allowed by the ALJ because it showed good cause for failing to appear.

**Voluntary Leaving.** 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. Claimant had mastocytosis, 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.

Claimant quit work due to the stress from her workload and how it affected her health and because the CEO insisted she repeatedly clean chairs with a chemical that could aggravate her mastocytosis. To the extent claimant left work due to work stress from moving the office and having to clean chairs, claimant failed to show that she faced a grave situation. Neither assignment was unreasonable or likely to be a regular job duty. However, claimant showed she faced a grave situation to the extent her workload aggravated her mastocytosis and she was asked to use a chemical to clean chairs that could also potentially aggravate her mastocytosis. 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 her workload to the employer and, if necessary, also told the employer she had a medical condition that was aggravated by stress and asked the employer for changes to accommodate her condition. The employer showed it was willing to do so. Although the supervisor was apparently dismissive of claimant's complaint about her coworker's conduct in throwing recycling toward claimant's desk, claimant had regular contact with the CEO and had the reasonable alternative of complaining to him to see if he would address the matter with the other employee. Similarly, claimant could have told the CEO that she was not able to expose herself to the cleaning chemicals again for health reasons and asked to use a safe alternative or have the duty reassigned to someone else. We conclude that a reasonable and prudent person with claimant's condition would have pursued reasonable alternatives such as bringing her concerns to the CEO or requesting an accommodation for her medical condition, before quitting her job.

In sum, the employer has shown good cause to reopen the August 29, 2017 hearing, and claimant voluntarily left work without good cause. Claimant is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 17-UI-95186 is affirmed.

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

**DATE of Service:** November 28, 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](http://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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