

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1353

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141300). Claimant filed a timely request for hearing. On October 27, 2017, ALJ M. Davis conducted a hearing, and on November 3, 2017 issued Hearing Decision 17-UI-96177, affirming the Department's decision. On November 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Multnomah County School District #1 employed claimant as a para-educator from August 29, 2016 to August 7, 2017.

(2) Claimant worked as a para-educator for the employer during the 2016-2017 school year with her last day at work on June 20, 2017. In March 2017, claimant was given assurance that she would resume her job with the employer during late August 2017 and continue during the 2017-2018 school year.

(3) In June, shortly after claimant was off work with the employer for the summer recess period, claimant began a job at a non-profit shelter. Claimant was a Muslim and typically wore the hijab in honor of that. Not long after she began, she was physically attacked by a patron at the shelter. Around mid-July, she sought treatment for anxiety due to the attack and her provider prescribed a course of medication to treat her condition. In early August, claimant was the object of a verbal attack at the shelter from another patron. On the day in question, the patron was upset about something and began following her around. He loudly exclaimed, "I'm going to bomb this place and I'm going to start with you" while pointing at claimant. Audio Record ~ 12:15 to 12:45. The manager on duty did not respond to the threat and claimant did not feel safe at the shelter or anywhere else anymore. Claimant quit her job at the shelter.

(4) After the verbal attack, claimant's anxiety increased. Her provider increased her medications and recommended resources for claimant. However, claimant's anxiety reached the stage where she was afraid to even leave her home and so she isolated herself there. She decided to quit her job with the

employer, and on August 7, 2017, sent the employer notice of her immediate resignation, without giving a reason. Prior to resigning, claimant did not inquire about the possibility of obtaining a leave of absence from the employer, which claimant was unaware of but would have been eligible for.

(5) On or around August 24, 2017, claimant moved to Missouri. Had claimant known of the option of requesting and obtaining a leave of absence, she would have requested one and would not have resigned if she had qualified for one.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 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 the employer for an additional period of time.

Claimant testified that she quit work because of the anxiety she experienced following the physical attacks in June and the verbal attack in early August. Audio Record ~ 6:15 to 6:30. However, claimant did not assert or show that her medical provider recommended that she quit work as a result of her anxiety condition. Claimant also asserted that if she had known that she was eligible for a leave of absence, she would have requested one, and if she had obtained one, she would not have resigned. Audio Record ~ 21:30 to 24:00. However, claimant failed to show that at the time she quit work, she had not received or even requested a note from her provider describing her anxiety and perhaps excusing her from work for a period time or otherwise requesting a leave of absence based on medical necessity, nor did she discuss her situation with anyone at the employer’s school to determine if there was an option available to her short of quitting work. Those alternatives were reasonable, and, given that claimant did not even inquire about or pursue them, claimant did not show that it would have been unreasonable or futile for her to do so.

For those reasons, we conclude that claimant voluntarily left work without good cause and is therefore disqualified from receiving unemployment insurance benefits on the basis of her work separation until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-96177 is affirmed.

¹ Claimant did not establish that her anxiety condition was a permanent or long-term impairment as defined at 29 CFR §1630.2(h). We therefore analyzed claimant’s decision to quit work using the standard of a reasonable and prudent person without impairment. Even if we had concluded otherwise, the outcome of this decision would remain the same because, for the reasons explained herein, a reasonable and prudent person with the characteristics and qualities of an individual with an anxiety condition would not have quit work under the circumstances claimant described without pursuing reasonable alternatives to quitting work available to her.

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

DATE of Service: December 22, 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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