

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1404**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73323). Claimant filed a timely request for hearing. On November 13, 2017, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on November 16, 2017 issued Hearing Decision 17-UI-97031, affirming the Department's decision. On December 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Oregon Department of Transportation employed claimant from May 12, 2016 until August 23, 2017, as a traffic control designer.

(2) Claimant felt verbally intimidated and bullied by the lead engineer to work on only certain projects that the lead engineer preferred, causing claimant to fall behind on projects assigned to her for two other employees. The lead engineer was not claimant's supervisor and claimant was not behind on the lead engineer's projects. Claimant felt the lead engineer's demands undermined the work she did for the employer. The lead engineer also mocked claimant's work performance by rolling her eyes or frowning and shaking her head when the other employees commented about claimant's work product or the supervisor asked about claimant's work performance. The lead engineer often spoke to claimant in a condescending way and made disparaging comments about claimant's ability to her coworkers.

(3) During June through December 2016, claimant met monthly with her supervisor. Claimant explained her concerns about the lead engineer to her supervisor, and her supervisor told her she would not do anything about it because the lead engineer had been there a long time, did good quality work, and produced a lot of work.

(4) Claimant has a chronic anxiety disorder. In February 2017, the lead engineer's conduct toward claimant worsened, and claimant had a panic attack and was unable to work. Claimant had not had a panic attack before. Claimant told her supervisor she had experienced a panic attack due to the lead engineer's conduct at work and the supervisor told claimant to take time off work. Claimant took two

weeks off work due to her anxiety symptoms. Claimant's symptoms subsided while she was off work. Claimant had expected the employer to address the lead engineer's conduct while claimant was off work, but the employer did not do so.

(5) For the next few weeks, claimant was satisfied with how the lead engineer treated her, but then the lead engineer's "bullying" of claimant about her work intensified again beginning in May 2017. Audio Record at 14:43-15:05. Claimant tried to avoid the lead engineer when possible based on her work assignments, but her anxiety symptoms returned.

(6) Claimant did not complain to the supervisor she spoke with in February 2017 again. In June 2017, claimant told another new supervisor about the problems she experienced with the lead engineer, and he told claimant he would not address her concerns because he was new to the supervisor role.

(7) Claimant did not complain to human resources, in part, because she believed the employer would not make changes for claimant because she was a newer employee. Claimant could not have avoided the lead engineer if she transferred within the department because they would have still worked on projects together even if claimant had a different role. Claimant was a union member, but was unfamiliar with how to complain to her union. Claimant also did not complain again, in part, because her anxiety disorder affected her ability to address with the employer the lead engineer's treatment of her.

(8) The lead engineer continued to treat claimant in the same manner until, in August 2017, her conduct became even more focused on claimant, and claimant had another panic attack.

(9) On August 23, 2017, claimant left work to preserve her mental health because the manner in which the lead engineer treated claimant at work caused claimant to have panic attacks and aggravated her anxiety disorder.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that 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 P2d 722 (2010). Claimant experienced anxiety, 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 an impairment would have continued to work for her employer for an additional period of time.

In Hearing Decision 17-UI-97031, the ALJ found that claimant did not face a situation of such gravity that she had no reasonable alternative but to quit. Hearing Decision 17-UI-97031 at 3. The ALJ reasoned that it would not have been futile for claimant to complain to her supervisor again about the lead worker's conduct toward her, or to complain to higher levels of management or her union about the

lead worker even though, despite her “severe anxiety,” claimant would likely have to continue working with the lead worker while seeking assistance. *Id.* at 4. The ALJ also reasoned that, despite claimant’s “distress,” claimant failed to prove she could not reasonably have continued working until she secured employment elsewhere. *Id.* We disagree.

It is unrefuted that claimant experienced increased anxiety and panic attacks due to how the lead engineer treated her at work. We thus conclude that claimant faced a grave situation at work. We disagree with the ALJ that complaining to her primary supervisor again was a reasonable alternative because the supervisor told claimant she would do nothing to address claimant’s concerns, and even after the supervisor knew claimant had a panic attack because of the lead engineer’s mistreatment she did not speak with the lead engineer about her conduct. Claimant received a similarly unhelpful response from a new supervisor to whom she complained in June 2017. The record lacks any evidence that complaining to human resources would have caused any appreciable change to the lead engineer’s behavior. Moreover, claimant described the impact of the lead engineer’s conduct on her mental health as inhibiting her ability to “react rationally” to the situation, which we find plausible and persuasive for a person with the characteristics and qualities of an individual with an anxiety disorder. Continuing to work for the employer until claimant secured work elsewhere was an unreasonable alternative for a person experiencing anxiety and panic attacks due to work stress. Therefore, on this record, we conclude that no reasonable and prudent person with the characteristics and qualities of an individual with an anxiety disorder who was experiencing panic attacks would have continued to work for her employer for an additional period of time.

Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 17-UI-97031 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service:** January 11, 2018

**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](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.

**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.