

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1438

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 74801). Claimant filed a timely request for hearing. On December 8, 2017, ALJ Janzen conducted a hearing, and on December 11, 2017 issued Hearing Decision 17-UI-98694, affirming the Department's decision. On December 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Lunar Logic employed claimant from February 2, 2016 until October 24, 2017 as a sales support specialist.

(2) During 2016, the employer billed its clients based on materials and time at an hourly rate that varied according to the role of the employee providing the services. Prior to January 2017, the employer informed its staff it would be changing its business model and billing processes. In January 2017, the employer changed its business model and associated billing processes. The employer informed its clients of the changes, and all but five of the employer's clients agreed to switch to the employer's new budget based billing, where a client was billed the same amount each month for a list of "deliverables" to be provided by the employer by the end of the project. Transcript (December 8, 2017 a.m.) at 19. The other five clients continued with the "time and materials" method of billing. As a result of the changes, the employer asked claimant to bill clients at least the minimum amount of the client's budget every month regardless of what time and materials the employer provided toward that client's account that month.

(3) The owner told claimant and other employees that anyone who had questions about its new billing practices was welcome to talk to her about them. As well, the employer informed the staff that, if they

were concerned about a client's budget, or the client did not understand the budget or value they received from the employer, claimant's manager would help them with that.

(4) During April 2017, claimant provided the owner information about client accounts showing the employer was undercharging some clients for the work it performed. The employer used the information claimant provided to address problems that might result in undercharging clients.

(5) In May 2017, claimant was upset because she was unable to cash a paycheck from the employer due to a bank error. The same day claimant was unable to cash the check she texted the owner, and the owner gave claimant another check that was paid. That was the only occasion claimant had an issue with a paycheck from the employer.

(6) After May 2017, claimant told her supervisor, manager and the accounting manager multiple times that she did not agree with the employer's billing practices and "couldn't be a part of it anymore." Transcript (December 8, 2017 a.m.) at 10. Claimant felt the employer was overcharging clients for the value of the services and materials it provided.

(7) In 2017, claimant had sought treatment from her doctor for work-related stress and depression. In May 2017, her doctor treated her with medication, and in June 2017 claimant began meeting with a counselor. Claimant also tried acupuncture to relieve her stress. Her doctor recommended she leave her job. Claimant did not tell the employer she was experiencing work-related stress.

(8) The employer had a short-term disability policy. Had claimant told the employer that she was experiencing stress related to work she would have potentially qualified for paid leave.

(9) During June 2017, the owner learned of more discrepancies in billing showing the employer was undercharging clients. The owner was displeased and told claimant and other staff it had to make changes or lay off employees. Claimant was upset at the possibility of the employer laying off employees. The owner apologized later that day for her comments about laying off staff.

(10) On September 18, 2017, claimant brought bills that she questioned to her supervisor and complained that she felt the employer was overcharging the clients. In response, claimant's supervisor reviewed the bills with claimant and reduced some charges, but left others the same because he felt the charges were justified. Claimant met with the supervisor again after September 18 and told him she thought improvements were being made in the billing.

(11) Claimant also felt stress from work because the 401(k) deductions taken from her paychecks from April 2017 through July 2017 were not applied immediately to her 401(k) account. Claimant complained to the employer's accounting manager about the tardy deposits. The employer was actively working with the third party administrator to correct the deposits. The contributions were deposited into claimant's account in August 2017 and October 2017. A final error was corrected two days after claimant's resignation.

(12) On October 24, 2017, the employer discharged one of its salespeople. Claimant was upset about it because she would have more work and work stress, and believed the reason the employer discharged the employee was unjustified. Claimant went for a walk. While walking, claimant's manager sent her a

text asking her if she was going to quit. Claimant returned to the office and resigned because she believed the employer's billing practices were unethical and due to the impact of work stress on her health.

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant was diagnosed with depression, which may be considered permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). Claimant must show that no reasonable and prudent person with depression would have continued to work for her employer for an additional period of time.

To the extent claimant quit work because she thought the employer's billing practices were unethical and dishonest, claimant did not have good cause to quit. Claimant did not establish that the employer's billing practices were illegal or unethical, or that the employer caused claimant to commit illegal or unethical practices during her employment. Moreover, even if claimant found the billing practices personally unethical, employers make business choices that employees disagree with but may reasonably expect employees to implement. The mere fact that an employee disagrees with an employer practice does not give her good cause to quit, even if the employee feels working for the employer requires her to violate her personal ethics. To establish good cause to quit, an employee who has depression who leaves work because she disagrees with a policy or practice, or feels it violates her personal ethics, must show a reasonable and prudent person with depression would also conclude the employer's actions gave her no choice but to leave work. Although claimant showed the employer made some changes to bills after she showed them what she perceived to be overcharges, the record does not show that the employer regularly overcharged clients as a matter of practice or that it was not amenable to correcting errors once claimant showed them to her supervisor. Absent such a showing, claimant failed to show that a reasonable and prudent sales representative with depression would conclude that the employer's billing practices gave her no reasonable alternative but to leave work when she did. Where there were errors, claimant had the reasonable alternative of asking her supervisor to review the charges.

Regarding the delay in receiving one paycheck and her 401(k) contributions, we conclude claimant did not face a grave situation. The employer remedied both problems within a reasonable time and neither problem appears to have been attributable to the employer's action or inaction.

Claimant had depression and claimant's work stress may have exacerbated her medical condition. To address the impact of work stress on her health, claimant could have taken time off work, perhaps even paid time off if she qualified for disability leave through the employer. The record fails to show that the employer would prohibit claimant from taking time off work or that claimant's medical condition was so serious she had no reasonable alternative but to instead quit.

Accordingly, we conclude claimant left work without good cause and is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 17-UI-98694 is affirmed.

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

DATE of Service: January 19, 2018

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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