

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1469

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75351). Claimant filed a timely request for hearing. On December 14, 2017, ALJ Griffin conducted a hearing and issued Hearing Decision 17-UI-99054, affirming the Department's decision. On December 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was relevant and based upon the hearing record.

FINDINGS OF FACT: (1) Pacific NW Petroleum employed claimant at its hotel from May 2015 to September 25, 2017.

(2) Claimant worked for the employer as a front desk agent. In 2017, the employer's business had significant employee turnover. Claimant temporarily assumed some managerial duties and, between June and August, worked a significant amount of overtime. Claimant repeatedly mentioned that she was struggling with the hours and work but the employer reacted to her complaints with indifference and did not allow her to take time off work. The hotel manager, Tim, made statements to claimant that led her to conclude that he blamed her for the problems the employer was having with the hotel. Claimant and a coworker frequently complained about each other to Tim, who told claimant to stop complaining to him about the coworker.

(3) On August 14, 2017, claimant became ill at work, suspected she was having a heart attack, and went to the emergency room. Claimant was hospitalized with Takotsubo cardiomyopathy, heart disease caused by severe stress. She understood that Tim told others that he thought she was faking her condition to get time off work. Claimant also felt that she had to struggle with the employer to receive sick pay during her absence; she communicated with the human resources department about her sick pay and ultimately received the pay to which she was entitled.

(4) When claimant was ready to return to work, she went to Tim's office to tell him she could return to work. Tim stood in the doorway of his office and did not invite her in. Although Tim told her she could return to work during that conversation, claimant felt he did so with a hostile tone.

(5) On approximately September 1, 2017, claimant returned to work. The employer reduced her hours, consistent with claimant's medical restrictions, and moved her to a new shift the employer considered less taxing. Claimant was dissatisfied with the new shift and wanted to return to her previous work schedule. She also felt that Tim and others treated her with hostility that was "palpable," although no one yelled at her or engaged in other overtly hostile behaviors. Transcript at 13. Around that time, claimant greeted Tim and he returned her greeting. Claimant felt the manner in which Tim returned her greeting was hostile. She felt uncomfortable and unwelcome. Claimant felt Tim had caused her to have a heart attack and was acting hostile toward her because he felt guilty. Transcript at 13.

(6) At some point, claimant told Erica, the employee she perceived was in charge of things when Kevin was absent, that she felt "underutilized" and had the skills to help with group reservations. Transcript at 16. Erica told claimant that Tim and Kevin did not want claimant to help.

(7) On September 21, 2017, claimant told the employer that she would report to work late due to a doctor's appointment. The employer responded that claimant could not report to work late. Claimant thought the tone of the interaction displayed hostility toward her.

(8) On September 22, 2017, claimant felt cardiac symptoms. She took medication when she arrived home, which treated the symptoms. Claimant decided at that point that work was too stressful for her to continue, and decided to quit work.

(9) On September 25, 2017, claimant voluntarily left work because of the hostility she perceived and the stress she felt as a result of it.

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 had heart disease, 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 experienced significant stress at work that either caused or contributed to her development of heart disease. Under some circumstances, such a situation might be considered to be of such gravity that a reasonable and prudent person with heart disease would quit work. In this case, however, claimant

failed to prove by a preponderance of the evidence that such an individual would have no reasonable alternative but to leave work because, on this record, it does not appear that she notified the employer of her concerns or gave the employer the opportunity to address her complaints. For instance, when the ALJ asked claimant if she told anyone that she was “getting a – a sense of that I’m not welcome here and what can we do to, you know, maybe ease the tension a little bit,” claimant responded that she told Erica and Kevin that she was underutilized and could help with group reservations, but they declined. Transcript at 16-17. Claimant told Tim and Lori that she needed help with her work because the hotel was understaffed and nothing was done to correct that situation. Transcript at 17. Claimant also told the Bureau of Labor and Industries and Magdalena about her concerns about her sick pay and return-to-work conditions after her hospitalization and the employer resolved the problem. Transcript at 17-18. Claimant did not otherwise describe a situation in which she told anyone at the employer’s business that she perceived Tim, Lori, Erica, Kevin, Magdalena or any other employee as “hostile” toward her, or complained that she was offended or hurt by their behaviors toward her. In the absence of such evidence, or evidence suggesting that such complaints would have gone unaddressed, the record does not show that it is more likely than not that a reasonable and prudent person with heart disease would have had no reasonable alternative but to quit work under the circumstances. We therefore conclude that claimant voluntarily left work without good cause, and is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-99054 is affirmed.

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

DATE of Service: January 25, 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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