

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1474

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120410). Claimant filed a timely request for hearing. On December 6, 2017, ALJ Griffin conducted a hearing, and on December 13, 2017 issued Hearing Decision 17-UI-98876, affirming the Department’s decision. On December 23, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant’s argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Intel Corporation employed claimant as a fabrication operator from September 1, 2016 to October 11, 2017.

(2) At all relevant times, claimant had persistent depressive disorder. He experienced anxiety, lethargy, a lack of desire to do things he used to enjoy doing, trouble sleeping, being short with his coworkers, and being quick-tempered. He also had frequent suicidal ideations and a suicide plan.

(3) Claimant worked 12-hour shifts in a clean-room environment. The room in which claimant worked was small, glass-lined and felt like a “fishbowl.” Audio recording at ~ 10:05-11:30. He had to wear a protective “bunny suit” that was enclosed except for a small oval viewing circle and felt “claustrophobic.” *Id.* His job required him to work in isolation for extended periods while closely monitoring three computer screens. Claimant felt the job “was sucking the life out of me and I just couldn’t sit in there anymore for 12 hour days.” *Id.* Claimant felt that his working conditions exacerbated his depression symptoms.

(4) Claimant sought different work with the employer. He checked the employer's internal job listings and did not find any work he qualified to perform. Claimant felt that he did not "fit" with the company philosophy because the employer wanted college-educated employees who innovated, whereas claimant lacked a college degree and just wanted to do his job and go home. Audio recording at ~ 19:30. After unsuccessful attempts to find a new job that way, claimant stopped trying.

(5) In July 2017, claimant began attending weekly counseling sessions with a licensed psychologist. Despite counseling, claimant remained at risk for suicide.

(6) Between approximately July and September 2017, claimant talked to his manager about being unhappy in his work environment and said he felt "trapped in that room" during his shifts. Audio recording at ~ 9:00. Claimant's manager discussed the possibility of moving claimant to another position, but never followed up with claimant about the transfer.

(7) During counseling claimant told his psychologist how his job affected him. The psychologist agreed with claimant that he should probably leave his job, although he did not like the idea of claimant leaving his employment without already having another job.

(8) In the last part of September, claimant talked to his manager again about his working conditions. Claimant asked his manager if he would prefer claimant just quit, effective immediately, or give notice. The manager asked claimant to give notice. Claimant gave the employer a written notice of his intent to leave work in three weeks; in the notice, claimant explained why he was choosing to quit work. Claimant's manager concurred with claimant's decision to leave and did not offer claimant any alternatives that would have allowed him to continue working.

(9) Claimant last worked for the employer on October 11, 2017, at which time he quit work.

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 he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 depression, 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 his employer for an additional period of time.

The ALJ concluded that although a "reasonably prudent person" with persistent depressive disorder and suicidal ideations "would give serious consideration to leaving work" under the circumstances claimant described, claimant did not establish that there was no reasonable alternative to quitting work. Hearing Decision 17-UI-98878 at 3. Specifically, the ALJ stated that the employer was "a large corporation with

a human resources department and an internal job recruitment site,” and claimant “could reasonably be expected to explore, with someone other than his direct supervisor, what other opportunities were available to him that did not involve the stress and isolation that working in the fabrication center entailed.” *Id.* We disagree.

While it might be reasonable in some cases for an individual to explore those alternatives to quitting work before quitting, the record does not show that those alternatives were reasonable in this case. Claimant acknowledged there was a human resources department within the employer’s business, but he testified that they were located off-site in a U.S. Territory and were not readily available to help him and the record fails to show that claimant knew or reasonably should have explored working with human resources with regard to an internal transfer when, to his knowledge, his supervisor was apparently supposed to help him with that. Claimant testified that he was aware of the internal job recruitment site and had explored it in the past; however, he also testified that he had not qualified for the jobs available because he lacked a college degree. We conclude that, on this record, it is more likely than not that those alternatives would have been futile for claimant to explore, and therefore that they were not reasonable alternatives for claimant to quitting work.

We note that at the time claimant quit work, he had, months prior, sought other jobs with the employer and begun working with his manager to get reassigned to a position that did not involve a “fishbowl” environment and “claustrophobic” protective gear or otherwise exacerbate his depression and suicidal ideations, to no avail. We also note that claimant explained his circumstances to his manager at the time he quit work and, rather than suggesting a transfer or other possible resolution to claimant’s problems with his working environment, the manager concurred in claimant’s decision to quit work. Where an employer knows that claimant is quitting for a particular reason and does not offer any alternatives to quitting, the employer’s silence implicitly suggests that there were no alternatives and the further attempts to resolve the situation would have been futile. *See e.g. Early v. Employment Dep’t.*, 247 Or. App. 321, 360 P.3d 725 (2015) (so stating).

Finally, we note that the range of reasonable alternatives available to an individual experiencing depression with symptoms ranging from sleeplessness and lethargy to anxiety and suicidal ideations are, as a practical matter, far more limited than the alternatives available to someone who is not actively experiencing a period of ill health. The question in this case is whether an individual whose reasonable alternatives were limited by persistent depressive disorder and suicidal ideations, whose work environment exacerbated his conditions, and whose attempts to change his working environment had failed, would find undertaking additional attempts to change his working environment a reasonable alternative to quitting work. We conclude for the foregoing reasons that he would not, and therefore conclude that claimant had good cause for quitting work. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-98878 is set aside, as outlined above.¹

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

¹ 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.

DATE of Service: January 30, 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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