

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1478

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 161735). The employer filed a timely request for hearing. On December 1, 2017, ALJ Monroe conducted a hearing, and on December 7, 2017 issued Hearing Decision 17-UI-98541, affirming the Department's decision. On December 26, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

We considered the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) Animal House Exotic Pets, Inc. employed claimant from April 7, 2017 until August 2, 2017 to clean and do customer service.

(2) On July 24, 2017, claimant met with her doctor because of a skin rash on one leg. Her doctor diagnosed her with ringworm and prescribed an ointment to use on her skin for the condition. The doctor recommended that claimant avoid exposure to allergens at work.

(3) After July 24, 2017, claimant told her manager that her doctor advised her to avoid allergens at work. In response, claimant's manager changed claimant's job duties to reduce her exposure to allergens at work, such as limiting claimant's cleaning duties to cleaning cages of reptiles, bugs and fish. However, there were no positions at the store that did not involve cleaning tasks.

(4) On July 27, 2017, claimant started feeling sick with a fever and fatigue, and by July 29, 2017, because she was still feeling sick and her rash had spread further on her leg, and to her other leg and arms, she went to urgent care.

(5) Claimant remained sick until August 1, 2017, and on August 2, 2017, she had a follow up appointment with her doctor. Her doctor told her that she the spreading rash was a skin rash condition

known as PUPPP (pruritic urticarial papules and plaques of pregnancy), and that it was aggravated by allergens such as animal dander and dust. Claimant's doctor told her that she should quit her job with the employer because her skin condition would not remit if she continued to work for the employer and that it could become serious. Claimant was too sick to work on August 1, 2 and 3, 2017.

(6) On August 3, 2017, claimant told the employer's manager that she quit work to relieve her skin rash condition.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant quit her job because, based on her doctor's advice at the time she quit, her work environment was causing her to have a rash that would not go away if she continued to work for the employer, and could become serious. When claimant first received medical advice that she should limit her exposure to allergens at work, she told her manager, and the manager gave claimant job duties that involved less exposure to allergens. However, when claimant's condition worsened even after limiting her exposure to allergens at work, her doctor advised that she quit her job. The record shows there were no positions at the employer's store that did not involve cleaning tasks, and we presume that, based on the type of business, there were no cleaning tasks that did not involve at least some exposure to allergens. Based on this record, we conclude that no reasonable and prudent person would have continued to work for the employer.

At hearing and in its written argument, the employer asserted that claimant did not have good cause to quit because, after she quit, another doctor diagnosed claimant's rash as an allergic reaction to the ointment she was prescribed to treat ringworm, and not as a condition that worsened from exposure to allergens at work. Transcript at 13-14, Employer's Written Argument. The relevant inquiry to determine if claimant had good cause to quit is whether claimant faced a situation of such gravity *at the time she quit* that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. Based on claimant's diagnosis and the advice from her doctor on August 2, claimant faced a grave situation due to her medical condition, and based on the information available to claimant at that time, a reasonable and prudent person would have had no reasonable alternative but to quit at that time. Claimant did not know, and could not have reasonably known, that her diagnosis would change to show the allergens at work were not making her sick. Similar reasoning holds true for the employer's assertion at hearing that claimant was going to leave work anyway to attend school. Transcript at 22-23. Claimant did not plan to attend school until September 25, 2017; school attendance was not the reason claimant left work on August 3, and it is

therefore not relevant to the inquiry of whether she should be disqualified from unemployment benefits due to this work separation. Transcript at 24-25. Finally, the employer's concerns about claimant's eligibility for unemployment benefits due to number of hours she worked and wages she earned is not a matter before EAB in this proceeding, and should be directed to the Department. *See* Employer's Argument.

Claimant voluntarily left work with good cause and is not disqualified from receiving benefits based on her work separation.

DECISION: Hearing Decision 17-UI-98541 is affirmed.

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

DATE of Service: January 29, 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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