

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0215

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 9, 2018 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93602). Claimant filed a timely request for hearing. On February 6, 2018, ALJ Janzen conducted a hearing, and on February 8, 2018 issued Hearing Decision 18-UI-102872, reversing the Department's decision. On February 26, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Bluebird World, LLC employed claimant from sometime in April 2015 until October 11, 2017, last as sales associate and training manager. The employer operated a retail cannabis dispensary.

(2) Sometime around 2014, claimant was diagnosed with post-traumatic stress disorder (PTSD). At that time, claimant began regular treatment with a clinical psychologist to manage the effects of this PTSD. Until approximately 2017, claimant had weekly sessions with the psychologist.

(3) Beginning sometime around late 2016 or early 2017, claimant began to perceive the behaviors of some of her male coworkers as overly and inappropriately sexualized. Claimant thought that these male coworkers made suggestive comments about the clothes and bodies of female customers and female coworkers and inappropriately identified those females with which they wanted to have sexual relations. Once, a coworker "cornered" claimant outside of work and told claimant "I'm going home with you

whether you want me to or not.” Transcript at 24. Those comments were disturbing to claimant and claimant thought they exhibited hostile and demeaning attitudes toward females.

(4) In approximately late February 2017, claimant had a sexual encounter with a male coworker after she and he attended an industry function with a group of coworkers. Claimant perceived that the encounter was not consensual and that she was the victim of a sexual assault. As a result of her perceptions about the behavior of this male coworker and of the behaviors of other male coworkers that she thought was inappropriately sexualized, claimant came to believe she was not safe in the workplace. Also as a result of these feelings, claimant had a difficult time communicating with some of the male coworkers she was expected to train.

(5) Sometime after late February 2017, claimant told her immediate manager of her perceptions. The manager did not take steps to control the behavior that claimant found objectionable. Sometime after February 2017, claimant started to feel extremely anxious at the prospect of working and when she was at work. Claimant began losing weight, claimant’s hair began falling out and claimant began regularly vomiting before reporting for work due to the level of anxiety and stress she was experiencing. Around this time, claimant sought more intensive mental health treatment from her treating psychologist, and increased her therapy sessions to two and three per week in an effort to manage the anxiety and PTSD symptoms to which she was subject.

(6) In early August 2017, one of the employer’s male managers commented to claimant that when he was assisting a female customer he had been able to look down her shirt and it “gave him a boner.” Exhibit 1 at 4. The manager’s comment upset claimant and provoked an anxious response in her. Shortly after, claimant told one of the owners about the manager’s comment and the owner asked claimant to send him an email documenting the incident. On August 11, 2017, claimant sent an email detailing the incident to the co-owner. In the email, claimant also reported that she had opened the employer’s account on Instagram and the “picked for you” section was largely composed of pictures of “half-naked women or naked women,” which claimant attributed to some coworker having “liked” similar pictures from the platform of the Instagram account. Exhibit 1 at 6. Claimant thought that the pictures were evidence of the overly sexualized and sexually harassing attitude of her male coworkers.

(7) On August 12, 2017, the employer issued a warning to the male manager for his comment he had made that claimant had complained about. Exhibit 3 at 11. The co-owner told claimant shortly afterward that the employer had issued a warning to the manager. In early September 2017, the employer held a mandatory meeting of all staff to discuss the employer’s prohibition against sexual harassment. Sometime in September 2017, the employer implemented a training course which included viewing videos and passing tests to require its employees to obtain non-sexual harassment certifications.

(8) In late September 2017, the employer scheduled a meeting between claimant and certain managers to address difficulties claimant was having with her duties as a training manager, including specifically issues claimant was not communicating adequately with workers she was assigned to train. That meeting was scheduled for September 27, 2017. On September 27, 2017, before she met with the managers, claimant met with the employer’s chief executive officer (CEO). Claimant told the CEO that she believed she had been sexually assaulted by a male coworker in late February 2017. The male coworker was one of the coworkers that claimant was tasked to train and one of the coworkers with whom the employer believed she was not adequately communicating. The CEO asked claimant if she

had been examined by a physician or at a hospital, presumably to corroborate that a sexual assault had occurred as well as if she had reported to police that she had been assaulted. Claimant stated she had done neither and perceived the CEO's questions as indicating hostility toward her and her claim of sexual improprieties. The CEO then told claimant she would attempt to investigate and address her allegations, but that it would be difficult since so much time had passed since the incident giving rise to the allegations. The CEO told claimant that the employer was willing to schedule claimant's shifts so that she did not work at the same time as the coworker she had reported. Later in the day on September 27, 2017, claimant met with the managers to discuss areas in which the managers thought her performance was inadequate. At that meeting, claimant was relieved of duties as training manager although her pay was not reduced.

(9) On September 27, 2017, after the meeting with the managers, claimant posted some comments on her Twitter account. The comments claimant posted included, "my current workspace isn't healthy" and "my current situation has been poisoned by the male ego." Exhibit 1 at 11. The employer learned of claimant's comments and considered them to be disparaging.

(10) On October 3, 2017, the employer issued a warning, which it gave to claimant on either October 3 or 6, 2017. The warning demoted claimant to a non-supervisory position from that of training manager and informed claimant that the employer considered her posting on Twitter to have defamed the employer. Exhibit 1 at 10.

(11) Sometime after claimant received the October 3, 2017 warning claimant decided to leave work. Claimant's decision was based on the overly sexualized and harassing atmosphere she perceived in the workplace, her belief that the employer was not stopping the propagation of that atmosphere and the effect that the workplace atmosphere was having on claimant's symptoms from anxiety and PTSD. As of the time claimant made this decision, claimant's treating psychologist was of the opinion that "due to overwhelming stress from the hostile working environment" and without "any [perceived] way to improve the situation," claimant had no choice other than to resign. Exhibit 1 at 8.

(12) On October 11, 2017, claimant sent an email to the employer notifying it that she was resigning. In that email claimant stated that she thought the workplace was "unsupportive and hostile" and she did not "feel happy or safe" in it any longer. Exhibit 1 at 14.

CONCLUSIONS AND REASONS: Claimant voluntarily left work for 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 PTSD and work-related stress, 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.

At hearing the employer did not dispute that claimant experienced PTSD and work-related stress as she described, that she perceived the workplace as overly sexualized, sexually harassing and hostile or that she had the physical reactions to the workplace that she detailed – weight loss, hair loss, vomiting and extreme anxiety. While the employer may have adopted reasonable measures to respond to claimant’s concerns, the issue remains if, despite the employer’s reasonable efforts, a reasonable and prudent person with PTSD of the type that claimant experienced would still have considered her situation to be one of such gravity that she had no reasonable alternative but to leave work. Based on claimant’s unchallenged testimony and the opinion of claimant’s treating psychologist, it appears that claimant did continue to perceive her situation as one of gravity due to her impairment and regardless of the steps that the employer took to address her concerns. On this record, claimant met her burden to show that the circumstances that motivated her to leave work were grave and that she had good cause to leave work when she did.

Claimant had good cause to leave work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 18-UI-102872 is affirmed.

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

DATE of Service: March 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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