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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2018-EAB-0261</p>
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Reversed in Part
Late Request for Hearing Allowed
No Disqualification

PROCEDURAL HISTORY: On December 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80145). On January 9, 2018, decision # 80145 became final without claimant having filed a timely request for hearing. On January 18, 2018, claimant filed a late request for hearing. On January 25, 2018, ALJ Kangas issued Hearing Decision 18-UI-101758, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by February 8, 2018. On January 30, 2018, claimant responded to the questionnaire and on February 5, 2018, the Office of Administrative Hearings (OAH) mailed a letter canceling Hearing Decision 18-UI-101758. On February 12, 2018, OAH mailed notice of a hearing scheduled for February 26, 2018. On February 26, 2018, ALJ Murdock conducted a hearing at which the employer failed to appear, and on March 1, 2018, issued Hearing Decision 18-UI-104264, allowing claimant's late request for hearing but affirming decision # 80145. On March 13, 2018, claimant filed an application for review of Hearing Decision 18-UI-104264 with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For that reason, EAB did not consider claimant's argument or any information not received into evidence at the hearing when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant showed good cause for her late request for hearing are **adopted**.

FINDINGS OF FACT: (1) Zink Media, Inc. employed claimant as the office administrator from August 30, 2016 to November 14, 2017.

(2) Claimant suffered from anxiety, a condition she had been diagnosed with and treated for with prescription medication for over 5 years. Prior to 2017, claimant used her prescription medication as needed.

(3) In early 2017, claimant's working relationship with her manager became increasingly difficult. He became upset and angry with her over routine problems that would arise, and on one such occasion in April 2017, "screamed" and "cursed" at her, using "profanity" and the "f word" during his exchange with her. Audio Record ~ 26:00 to 27:00. Thereafter, their working relationship deteriorated further and she began using her anxiety medication on a daily basis to suppress her constant nervousness at work and allow her to get some sleep at night to overcome her fear that similar tirades would occur the next day.

(4) Claimant could not speak to human resources employees at the employer because claimant and her manager were the employer's human resources employees. Her manager's immediate supervisor was the employer's chief operating officer (COO) who was also a personal friend of the manager. The employer's in-house attorney was new to the job and also the COO's sister.

(5) Claimant spoke to a manager in another department and the employer's in-house attorney about her difficulty with her manager and they offered to meet with claimant and her manager in an effort to smooth over their working relationship. However, claimant's manager overheard their discussion, and before that meeting occurred, on or around September 22, 2017, claimant's manager called her into a room and went into a tirade with her, screaming and again directing foul language at her, because he believed she was criticizing him behind his back. Claimant confronted him at that time about her difficulty with him and also told him that he was failing as a manager because many other workers had come to her, as a human resources representative, complaining about his interactions with them.

(6) Following the September 22 tirade, claimant spoke with the employer's COO about her manager's behavior and the effect it was having on her. She requested a transfer to another department or another supervisor. He denied her request explaining that no such alternative was available. After praising her work and telling her that he was aware other employees thought highly of her, he told her that if she could not continue to work with her manager, she would be let go. Claimant told the COO that she could not continue to work for the employer under the same manager, but was willing to stay for another eight weeks to finish certain projects. The COO agreed.

(7) On November 14, 2017, claimant quit because of her manager's verbal abuse toward her, her stressful working conditions under him, and to protect her health.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 been diagnosed and treated for an anxiety disorder for several years. Accordingly, she had 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 the employer for an additional period of time.

In Hearing Decision 18-UI-104264, the ALJ concluded that claimant voluntarily left work without good cause reasoning that “while the situation was certainly unpleasant”, claimant did not show that she faced a grave situation or that she had no reasonable alternative but to quit because she “was willing to work with her manager for eight additional weeks” after she told the COO she was leaving and could have arranged a meeting with her manager, the other manager and the employer’s in-house counsel who had offered to attend a meeting previously. Hearing Decision 18-UI-104264 at 5. We disagree.

Claimant quit because of her manager’s verbal abuse toward her, the stressful working conditions it created and their effect on her health. Abusive and oppressive working conditions at work can, under some circumstances, amount to good cause for quitting. *See McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”); *Appeals Board Decision 11-AB-2272*, September 6, 2011 (regular fits of temper and verbal abuse); *Appeals Board Decision 11-AB-3063*, October 28, 2011 (corporate culture hostile to women); *Appeals Board Decision 11-AB-2864*, December 12, 2011 (management’s ageist comments and attitudes).

Claimant offered persuasive evidence that her situation at work was “oppressive.” She testified that on multiple occasions, her manager “screamed” and “cursed” at her and used “profanity” and the “f word” during his tirades and that his volatile temper created stressful working conditions for her on a daily basis, causing her to use anti-anxiety medication each night to be able to sleep and tolerate the next day’s work. Although claimant agreed to continue to work for the employer for an additional eight weeks after giving notice that she was quitting, there was no evidence she was required to work with her manager during those eight weeks. Moreover, the employer had no human resources department claimant could turn to as a solution because her manager was the only “human resources” employee other than claimant, which made that alternative a futile one. Although she never attended a meeting with her manager, the community manager and the in-house counsel, there was no evidence the community manager had authority over her manager and she had already consulted with the employer’s COO, the highest available authority, without success. Moreover, the in-house counsel in question was both new to the employer and the COO’s sibling. More likely than not, meeting with the employer’s in-house counsel, who on this record had no human resource function, concerning the issue she was facing would have been a futile exercise. The employer, having failed to appear, did not refute claimant’s evidence.

Claimant demonstrated her workplace conditions were degrading, stressful, and unlikely to change. On this record, viewed objectively, no reasonable and prudent person with the characteristics and qualities of an individual with claimant’s anxiety condition, having already attempted to transfer to another manager and speak with the employer’s highest authority about taking steps to end her manager’s verbal abuse, without success, would have continued to work for the employer for an additional period of time.

Claimant had good cause to leave work when she did, and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 18-UI-104264 is set aside, as outlined above.¹

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

DATE of Service: April 16, 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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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.