

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0286

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 85236). Claimant filed a timely request for hearing. On March 9, 2018, ALJ Amesbury conducted a hearing, and on March 12, 2018 issued Order No. 18-UI-104960, affirming the Department's decision. On March 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Telecris Plasma Resources, Inc. employed claimant as a phlebotomist from January 24, 2017 to January 25, 2018.

(2) On January 24, 2018, claimant called her manager and reported that she was ill and would not be able to work on the 25th.

(3) On January 25, claimant had severe chest and throat pain; she had a fever, hot/cold chills and body weakness. Claimant went to Urgent Care. They took a strep culture and told her that the results would be ready in two to three days. Claimant's symptoms continued to worsen after her Urgent Care visit. Claimant was scheduled to work on January 26 starting at 6:00 a.m.

(4) On January 25, at mid-morning, claimant called her manager and told her that she would not be able to go into work on the 26th because she was ill. She described her symptoms to the manager and told her about the Urgent Care visit, and that the strep test throat results would take two to three days. The manager did not believe that it would take two days for claimant to get her test results back, and told claimant that she expected her at work the next morning.

(4) In the early afternoon of January 25, claimant called the lead office manager. She described to him the symptoms she was experiencing, her visit to Urgent Care, and that the strep throat test results would take two to three days. She told him about her conversation with the other manager earlier that day, and relayed to him that the manager had told her that she expected claimant at work the next day. Claimant told the manager that if she was required to report to work sick, then she would have no other alternative but to quit. The manager told claimant that he would be sorry to see her go and asked her to send her resignation in writing. Claimant offered to give two weeks' notice and return to work when she was feeling better, but the manager told her that her resignation had to be immediate. The manager did not provide any other alternatives to claimant other than quitting.

(5) Claimant believed that she had two options, go into work ill as instructed by her manager or immediately quit work. On the afternoon of January 25, claimant submitted her resignation.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit 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.

In Order No. 18-UI-104960, the ALJ found that claimant quit work because her manager required her to report for work the next day despite being ill, and the employer's lead office manager did not provide claimant with any options after she told him she would quit if required to report for work sick.¹ However, the ALJ concluded that claimant quit work without good cause because, although her situation may have been grave, she failed to establish that she had no reasonable alternative but to quit.² To support that conclusion, the ALJ asserted that although claimant testified that she did not know she could use her accumulated paid time off (PTO) for when she was ill, a reasonable and prudent person in claimant's position would have at least asked whether she could her use it under the circumstances.³ The ALJ further asserted that a reasonable and prudent person who, like claimant, believed her managers were improperly forcing her to work while sick, would at least make an inquiry with employer's human resources section before resigning.⁴

We disagree. After her Urgent Care visit on January 25, claimant notified her manager that she would not be able to go into work on the 26th because she was too ill. Claimant explained her symptoms to the manager, told her about the Urgent Care visit and that the strep throat results would not be back for

¹ Order No. 18-UI-104960 at 2-3.

² *Id.* at 3.

³ *Id.*

⁴ *Id.*

about two to three days. The manager told claimant, “I do not believe that it takes two to three days, I will see you in the morning.” Recording at 24:44.

Claimant attempted to resolve the situation by calling the office lead manager. She described to the lead manager the symptoms she was experiencing and the details of her Urgent Care visit. She also told him about her conversation with her manager earlier that day, and that that manager had told her that she expected claimant at work the next day. Claimant told the lead manager that if, based on what her manager had told her, it was true that she had no option but to go into work sick, she would have no other alternative but to quit. The lead manager replied that he would be sorry to see claimant go, and to send her resignation in writing. When claimant offered to give two weeks’ notice the lead manager told her that her resignation had to be immediate. He did not provide any other alternatives to claimant other than quitting. He did not tell claimant that she did not have to come into work when she ill or that she could use her accrued PTO for sick leave.

No reasonable and prudent person would have concluded from the managers’ statements that requesting PTO was a viable option. Instead, their statements show that any such request likely would have been futile. Nor would a reasonable and prudent person have concluded from the lead manager’s statements that she had any other option but to report for work when very ill, or immediately quit work. Requesting PTO and complaining to the employer’s human resources section therefore were not reasonable alternatives to quitting. And finally, no reasonable and prudent person would continue to work for an employer that conditioned her continued employment on reporting for work when too ill to do so.

We therefore conclude that claimant quit working for the employer with good cause. Claimant is not disqualified from receiving benefits based on this work separation.

DECISION: Order No. 18-UI-104960 is set aside, as outlined above.⁵

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

DATE of Service: April 19, 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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⁵ This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.