

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0294

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 131858). Claimant filed a timely request for hearing. On March 8, 2018, ALJ Monroe conducted a hearing, and on March 16, 2018 issued Hearing Decision 18-UI-105359, affirming the Department's decision. On March 22, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Reese Landscapes employed claimant from August 2016 until November 28, 2017 as a landscape helper.

(2) Claimant had an anxiety disorder and depression. Claimant had told his operations manager about his medical conditions. The operations manager understood that claimant was sometimes unable to work due to anxiety.

(3) Although claimant generally worked as a landscape helper, the employer had claimant work as a lead worker on November 23 and 24, 2017 due to the employer's labor needs. Claimant was not able to manage his anxiety disorder while working as a lead worker because the lead worker position's duties of driving a truck and trailer, addressing customer complaints, and directing other crew members caused claimant to experience high anxiety and could trigger panic attacks.

(4) On November 27 and 28, 2017, claimant worked as a lead worker and as a result of the stress he felt from his work assignments on November 28, had a panic attack and was unable to finish his assignments. Claimant told the operations manager he was experiencing stress from working as a lead worker.

(5) The evening of November 28, 2017, the operations manager sent claimant a text message offering claimant two options for his work assignment on November 29. One assignment required claimant to work as the lead with one other crew member in his crew. The other assignment required claimant to work with a different crew member, but did not require claimant to be the driver. Claimant refused both

options and told the operations manager that he quit because he was only willing to work with one other crew member. That crew member was not the crew member he would have been working with under either option presented by the operations manager.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without 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 P2d 722 (2010). Claimant had an anxiety disorder and depression, which are permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

The preponderance of the evidence shows that claimant left work because work-related stress caused him to experience symptoms from his anxiety disorder, including a panic attack on November 28. Although claimant faced a difficult situation due to the effects of work stress on his health, the preponderance of the evidence at hearing does not show that claimant’s situation was one of such gravity that a person with an anxiety disorder would have no reasonable alternative but to leave work. The employer’s operations manager offered claimant a work assignment that did not require claimant to work as the lead driving the employer’s vehicles. Thus, although claimant had worked as a lead for several shifts until November 28, he had the reasonable alternative of continuing to work for the employer in an assignment that did not require him to drive. Moreover, the record does not show that working with other coworkers presented a grave situation for claimant, or that claimant’s preference to work with one particular coworker was more than a personal preference for the work assignment that he preferred the most.

We therefore conclude that claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits on the basis of this work separation until he has earned at least four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 18-UI-105359 is affirmed.

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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