

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0304

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110028). Claimant filed a timely request for hearing. On March 5, 2018, ALJ Murdock conducted a hearing, and on March 6, 2018 issued Hearing Decision 18-UI-104551, affirming the Department's decision. On March 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision. In her written argument, claimant stated, "I hope to be more concise and clear with my testimony at the next appeal hearing." Claimant's statement is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2016), which allows EAB to consider new information if the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing. Thus, even had we considered her written argument, we would have denied claimant's request for EAB to consider new information because claimant did not state what new information she wanted EAB to consider or why she did not present it at the March 5, 2018 hearing.

FINDINGS OF FACT: (1) Goodwill Industries employed claimant as a production lead from July 19, 2009 until claimant quit work on October 26, 2017.

(2) Claimant experienced anxiety as a result of a brain aneurysm she had before she began working for the employer.

(3) Before August 2016, claimant was generally satisfied with her working conditions. However, after claimant returned from a vacation in August 2016, several coworkers told her that the assistant manager at the store where claimant worked had said claimant was "on drugs." Transcript at 6. Claimant felt her

subordinates were avoiding her at work. Claimant did not use drugs and was insulted by the comments. Claimant avoided the assistant manager and complained about the assistant manager's comments to a human resources intervention specialist and a loss prevention person. The assistant manager stopped making the comments about drug use.

(4) After August 2016, claimant felt mistreated by the assistant manager because she supervised claimant closely, commented regarding claimant's work performance, and on a few occasions assumed claimant was responsible for certain errors in the store. On one occasion, the assistant manager yelled at claimant in front of her coworkers about her work performance. The assistant manager did not give claimant any official discipline.

(5) In November 2016, the assistant manager changed claimant's schedule so she was working on Sundays, which she preferred to have off work for family and religious reasons. Claimant complained to a manager at a different store, and the employer gave her Sundays off work again.

(6) In May 2017, a new manager began working at claimant's store, and the assistant manager quit in July 2017. Although the problematic assistant manager had quit, claimant became dissatisfied with the new manager. Claimant felt her position as a lead worker was undermined because her coworkers told her he had told them not to ask her questions about work. In addition, on one occasion, the new manager "screamed" at claimant because he was dissatisfied that claimant allegedly had spoken about another employee to a customer. Transcript at 22-23. Claimant denied having done so. On another occasion, the manager called claimant into the office and told claimant to refrain from being rude to a coworker after claimant allegedly made a rude statement to a coworker.

(7) Claimant complained to the human resources intervention specialist about some of the new manager's statements to her, but did not tell him the manager had ever "screamed" at her. The representative listened to claimant's complaints and suggested to claimant different, positive ways to interpret the manager's statements and actions.

(8) On September 15, 2017, claimant began a medical leave of absence from work for carpal tunnel surgery. Her planned return date was October 26, 2017. On October 15, 2017, claimant spoke with the human resources intervention specialist and told him she might quit. He asked her to "think about it," and planned to speak with her again, but claimant did not return to work due to her dissatisfaction with how her manager treated her. Transcript at 44. The employer was willing to transfer claimant to another store in her area had claimant requested a transfer.

CONCLUSION 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 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 an anxiety disorder, a permanent or

long-term “physical or mental impairments” 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.

Claimant did not establish that she left work because of a situation of such gravity that a reasonable and prudent person with the characteristics and qualities of an individual with her impairment would have no reasonable alternative but to quit. The assistant manager who had made the statements about claimant using drugs no longer worked for the employer when claimant quit, and although the new manager seemed to lack confidence in claimant’s work performance, there is no evidence that he, too, spread rumors of claimant using drugs. Although the situation with the new manager at the time claimant quit was tense for claimant, involved the manager yelling at her on one occasion and seemingly being rude to her on other occasions, the record fails to show that claimant’s working conditions were so hostile or abusive that claimant had to leave work when she did. Although the new manager told claimant’s coworkers not to seek direction from her, it does not appear on this record that the new manager uttered personal attacks, slurs or threats toward claimant or otherwise impugned her character. Thus, even though claimant understandably felt the manager undermined her ability to reach her potential as a lead worker, the record fails to show that claimant left work because of an immediately grave situation. Moreover, given the responsiveness of human resources to claimant’s complaints about the prior assistant manager and willingness to revisit her concerns about the new manager when claimant returned from medical leave, claimant had the reasonable alternative of continuing to work with human resources to address her complaints or potentially even transferring to another store.

In sum, claimant quit work without good cause. She is, therefore disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 18-UI-104551 is affirmed.

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

DATE of Service: April 20, 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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