

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0356

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 140154). Claimant filed a timely request for hearing. On May 28, 2018, ALJ L. Lee conducted a hearing, and on April 5, 2018 issued Order No. 18-UI-106783, affirming the Department's decision. On April 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Divine Catering employed claimant as an equipment manager from 2014 to February 22, 2018.

(2) Claimant thought the employer was unreliable, and that the employer consumed alcohol and was intoxicated while working, which caused claimant to be shorthanded and required her to do more work. In 2016, the employer over-reported claimant's income to a low-income housing agency, which might have caused claimant to lose her eligibility for housing subsidies.

(3) Claimant had anxiety and depression, and was undergoing treatment for those conditions since at least 2014. By fall 2017, claimant's counselor advised claimant to leave her job because the "working environment interfered with [claimant's] ability to maintain her wellness." Exhibit 1. Claimant continued to suffer symptoms of her conditions but continued working despite that advice because she hoped her working conditions would improve.

(4) The employer's payroll system automatically deducted a 30-minute lunch period from claimant's wages; however, there were repeated occasions upon which claimant was unable to take her lunch break and was entitled to receive pay for the entire period she worked. On each of those occasions, claimant asked the employer to adjust the payroll so claimant received all her earnings. The employer said she would adjust the payroll, but she sometimes did and sometimes forgot, resulting in claimant not receiving the full amount of her earnings for those pay periods when the pay was due.

(5) In mid-February, claimant thought about quitting her job and the office assistant convinced claimant to continue working and see if things improved. Thereafter, on February 19, 2018, the employer failed to communicate with claimant about a scheduling issue even though she was performing work-related tasks during the same time period. On February 22, 2018, the employer did not communicate to claimant that an event was canceled; as a result, claimant prepared and delivered food for the canceled event. That day, after learning about the canceled event, claimant quit work effective immediately.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit work 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). Claimant had anxiety and depression, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those 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 her employer for an additional period of time.

The ALJ concluded that claimant quit work without good cause, reasoning that although her “desire to leave her job was understandable” based upon the employer’s on-the-job intoxication, unreliability and poor communication, “the evidence was insufficient to show that claimant was facing a situation of gravity on February 22, 2018, when she quit.”¹ The ALJ wrote that it was the employer’s behavior in the few days prior to claimant quitting – deliberately ignoring claimant, failing to communicate with her, failing to show up at work – that caused claimant to quit work when she did.² However, that is inconsistent with the ALJ’s finding of fact that claimant had already decided to quit work prior to those events; the fact that some short intervening time occurred between when claimant decided to quit work and actually quit work does not render her original reasons for quitting work irrelevant.

As a preliminary matter, the employer did not appear at the hearing. Therefore, claimant’s testimony about her working conditions and the events that led her to quit work is uncontroverted. We found claimant’s testimony to be sincere and plausible, and therefore have no reason to doubt that claimant’s working conditions, and the effect they had on her, were as she described.

The record shows that at the time she quit work, claimant, an individual who experienced depression and anxiety for over four years, had recently been advised by her counselor after years of counseling to quit her job because of the effect the working conditions – including her supervisor’s behavior and poor communication – had on her health. No reasonable and prudent person with anxiety and depression

¹ Order No. 18-UI-106783 at 3.

² *Id.*

would conclude that it was reasonable to continue to work under circumstances that “interfered with [her] ability to maintain her wellness,” especially when advised by her counselor to leave the job.

The record also shows that there were repeated occasions upon which the employer failed to pay claimant her full wages when due, despite claimant having requested that the employer adjust to the payroll to reflect the actual hours claimant had worked. By failing to pay claimant the full amount of wages due to her on her scheduled payday, the employer violated Oregon’s wage and hour laws.³ The unlawful pay practice was ongoing despite claimant’s efforts to correct the situation by reporting the problem to the employer. No reasonable and prudent person would continue working indefinitely for an employer who failed to pay her for all the hours she worked on an ongoing basis. Although the ALJ found as fact that claimant did not contact the Oregon Bureau of Labor and Industries (BOLI) to inquire about whether she was entitled to pay for the 30-minute periods she worked, or file a wage claim⁴, no reasonable and prudent person would consider waiting for BOLI to address an ongoing payroll problem such as the one claimant experienced a reasonable alternative to quitting work as claimant did.⁵

For the foregoing reasons, claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 18-UI-106783 is set aside, as outlined above.⁶

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

DATE of Service: May 10, 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.

³ See e.g. OAR 839-020-0010; OAR 839-020-0012; OAR 839-020-0040.

⁴ Order No. 18-UI-106783 at 1.

⁵ See *J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (claimant had good cause to leave work when wage dispute over employer’s illegal practices was ongoing and not likely to stop); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990) (an employer’s repeated wage violations was good cause for claimant to leave work because “[n]o one should be expected to continue working for an employer who pays with bad checks”); *Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (claimant did not have good cause to leave work when the employer’s allegedly unlawful wage practices had not continued and were not ongoing at the time of the leaving and only the issue of the amount of restitution for back pay continued).

⁶ This decision reverses a hearing 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.

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