

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0686

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 75342). Claimant filed a timely request for hearing. On June 15, 2018, ALJ Schmidt conducted a hearing, and on June 19, 2018 issued Order No. 18-UI-111559, affirming the Department's decision. On July 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Portland Rescue Mission employed claimant from September 29, 2015 to March 30, 2018.

(2) The employer hired claimant as a gift processing seasonal employee, which was a temporary position. The employer later promoted claimant to a permanent, full time position in the gift processing department. Sometime between August 2016 and August 2017, the employer transferred claimant to another permanent, full time position as an administrative assistant in the employer's partnership department.

(3) Prior to September 29, 2017, claimant believed, based on her performance evaluations and other feedback from the employer, that she was considered a model employee. In her August 7, 2017 annual performance review, claimant's new supervisor, the employer's director of partnership, commended claimant for being highly relational, Christ-centered and a joyful servant. Her supervisor also commended claimant for her professional competence, productivity, and ability to work very well with others.

(4) In late August or early September 2017, claimant's supervisor had claimant review and edit all her coworkers' performance evaluations. Doing so made claimant uncomfortable, especially when one of her coworkers observed her reviewing the performance evaluations, including the coworker's own negative evaluation. Claimant asked her supervisor not to assign her to review and edit her coworkers' performance evaluations again. In mid-September 2017, claimant complained to the employer's human

resources department that she did not believe it had been appropriate for her supervisor to have her review and edit her coworkers' performance evaluations.

(5) On September 29, 2017, claimant's supervisor met with her and alleged that several coworkers had complained to him, and that he had personally observed that claimant was easily irritated. According to claimant's supervisor, some coworkers stated that they preferred not to interact with claimant. Claimant's supervisor also alleged that claimant's annual review set up a 30-day window for claimant to find training or assistance regarding organizational improvement, and that the expectation was not met. According to claimant's supervisor, a review of claimant's performance since her annual review showed several examples where requests or items were not accomplished, including a delay in assigning donors and not bringing a to-do list that week. On October 2, 2018, claimant's supervisor emailed her his summary of the meeting, stating that he had hoped it would go better, and that his observation that claimant had failed to improve her organizational skills had been met with claimant's resistance and defensiveness.

(6) Claimant disagreed with her supervisor's complaints and criticisms at the meeting, and his summary of her behavior at the meeting. She believed her supervisor was retaliating against her for complaining to the human resources department that it had not been appropriate for him to have her review and edit her coworkers' performance evaluations. Claimant's working relationship with her supervisor began to deteriorate. Claimant's supervisor became increasingly critical of her work but did nothing to help her improve. The resulting stress caused claimant to experience anxiety, the symptoms of which included insomnia, loss of appetite, daily crying at home and/or work, chronic muscle stiffness, and recurring minor illnesses.

(7) Claimant complained to the employer's human resources department, which implemented weekly meetings to help claimant and her supervisor communicate more effectively. From October 2017 through mid-February 2018, however, claimant's relationship with her supervisor continued to deteriorate. His dissatisfaction with claimant's work increased, and he still did nothing to help her improve. Claimant's level of stress and symptoms of anxiety worsened. In mid-February 2018, claimant's was informed that nothing had improved, and was placed on a performance improvement plan (PIP). From mid-February to mid-March 2018, claimant's relationship with her supervisor continued to deteriorate. His dissatisfaction with claimant's work increased, and he still did nothing to help her improve. Claimant's level of stress and symptoms of anxiety worsened.

(8) On or about March 13, 2018, the employer's director of staff ministries, its human resources specialist and claimant's supervisor informed claimant that she was being laid off from her position as administrative assistant for the partnership department at the conclusion of her PIP. On March 13, 2018, claimant receive a letter from the director of staff ministries stating that the employer was giving her three options for her transition from work for the employer. The first option was for an immediate termination of claimant's employment. The second option was for a termination of claimant's employment, effective March 30, 2018, to give claimant time to complete her work in the partnership department. Claimant would work through March 29th and be paid through March 30th, for accrued PTO and two weeks of severance pay, and leave in good standing barring unforeseen events.

(9) The third option was for claimant to complete her work in the partnership department by March 29th and then, on March 31st, begin temporary work in the gifts processing department doing lapsed donor

calls and filling in for staff when they were absent. The temporary position would last up to eight weeks depending on need, and was contingent on working out the details with the director of the gifts processing department. When the temporary assignment ended, claimant would be paid for the hours she worked, accrued PTO and two weeks of severance pay, and leave in good standing barring any unforeseen events. However, claimant would not receive severance pay if she quit work for another job before the temporary assignment ended.

(10) The director of staff ministries concluded the letter by instructing claimant to choose an option and notify the employer by the following day. Claimant felt obligated to work until March 20th to complete her work in the partnership department. However, she knew that the gift processing department was entering its slow season fully staffed. When claimant last worked in that department during the slow season, her hours were reduced from 40 to 32 per week, 15 of which were spent working in another department. Claimant therefore determined that if she accepted the employer's third option, there would be little, if any, work for her to perform. Claimant also determined that because she would be working so few, if any, hours, she would no longer receive health benefits through the employer.

(11) Claimant also was concerned for her mental health if she accepted the third option. Although claimant would no longer be working under her current supervisor, she likely would see him any time she was called in to work in the gift processing department. Claimant determined that continuing to work for the employer for up to 8 weeks under the conditions set forth in option three was not worth the further stress anxiety she would experience, the symptoms of which she already had endured for the previous 5 ½ months.

(12) On March 14, 2018, claimant notified the employer that she was accepting the second option for her transition from work for the employer, and left work on March 30, 2018 after completing her work in the partnership department on March 29, 2018.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause to quit working for the employer.

At hearing, claimant argued that the employer discharged her. However, based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's analysis with respect to the conclusion that claimant voluntarily left work is **adopted**.

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) (January 11, 2018). 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. If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

In Order No. 18-UI-111559, the ALJ concluded that claimant quit work without good cause because she quit due to a reduction of hours and failed to show that continuing to work substantially interfered with her return to full time work or that the cost of working exceeded the amount of remuneration received.¹ However, the employer did not merely reduce claimant's hours. It offered claimant the possibility of a demotion from a permanent full time position to a temporary, at least partly on-call, position for a maximum of 8 weeks, depending on the employer's needs, during which she would lose two weeks of severance pay if she quit for another job, and after which she would be discharged. Thus, because claimant did not quit due to a mere reduction in hours, her decision to quit work must be analyzed under OAR 471-030-0038(4), and not OAR 471-030-0038(5)(e).

Claimant determined, based on prior experience, that if she accepted the employer's offer there would be little, if any, work for her to perform, and that because she would be working so few, if any, hours, she would no longer receive health benefits through the employer. Claimant also was concerned for her mental health if she continued to work for the employer for up to an additional 8 weeks, and determined that the offered work not worth the further stress and anxiety she would experience, the symptoms of which she already had endured for the previous 5 ½ months. We agree with that determination. No reasonable and prudent person in claimant's situation would continue to jeopardize her mental health for a demotion to a temporary, at least partly on-call, position for a maximum of 8 weeks, depending on the employer's needs, during which she would lose two weeks of severance pay if she quit for another job, and after which she would be discharged.

Claimant quit work with good cause. She is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Order No. 18-UI-111559 is set aside, as outlined above.²

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

DATE of Service: August 13, 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 Order No. 18-UI-111559 at 2-3.

² 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.