

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0724

Reversed & Remanded

PROCEDURAL HISTORY: On June 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101820). Claimant filed a timely request for hearing. On July 12, 2018, ALJ Amesbury conducted a hearing, and on July 16, 2018 issued Order No. 18-UI-113173, affirming the Department's decision. On July 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-113173 is reversed, and this matter remanded.

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). An individual with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) 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.

The ALJ applied the standard of a reasonable and prudent person without impairment when reaching his decision.¹ However, claimant testified at the hearing that she had neuropathy in her legs and found it hard to use the stairs.² The ALJ must inquire with claimant about her neuropathy, and its cause, to determine whether or not it should be considered a permanent or long-term impairment such that the standard of a reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for the employer for an additional period of time. The ALJ should also ask claimant what, if any, effect the neuropathy had on her decision to leave work

¹ Order No. 18-UI-113173 at 2.

² Transcript at 15.

on May 22, 2018, and whether claimant's neuropathy had any effect on her ability to handle the quantity of work she had to do to dispense medication to the 56 patients under her care. The ALJ should also ask if claimant told anyone at the employer's facility about her neuropathy or that she had trouble with the stairs, and, if so, whom, and how they responded.

The ALJ concluded that claimant quit work without good cause in this case, reasoning that although claimant "described a stressful and perhaps unpleasant working environment" because she was overwhelmed by her workload and her supervisor's close attention, the situation was not "grave" because the supervisor did not use inappropriate language or criticize claimant over personal matters.³ The ALJ also wrote that claimant "failed to take reasonable steps to find an alternative to quitting."⁴ We disagree that the record supports the ALJ's decision, and additional evidence is therefore needed to determine whether or not claimant quit work with good cause.

The fact that claimant's supervisor did not use foul language towards claimant or criticize her appearance or personal life does not mean that the supervisor was not abusive or unprofessional towards claimant. Claimant testified, in essence, that her supervisor micromanaged her, made unreasonable demands of her, accused her of making errors that she had not made, and would "yell[]" and "shout" at claimant.⁵ Claimant testified that the supervisor was "humiliating me" and claimant would "always cry" as a result.⁶ The ALJ should ask additional questions of claimant about how her supervisor treated her to aid in a determination of whether or not the supervisor was abusive or unprofessional towards claimant, and to what extent.

Claimant testified that her work was stressful, not only because of her supervisor's treatment, but because the patients were ambulatory, she had to look for them to dispense their medication, they would try to make her overmedicate them, they followed her, and "they will even fight at me."⁷ The ALJ should ask claimant to describe her working conditions with respect to the patients, how those conditions affected her, and to what extent the patients' behavior affected her decision to quit work on May 22nd. Because claimant was overwhelmed by the amount of work and patients she had to handle in her job, the ALJ should also ask claimant to describe in greater detail why she had such difficulty managing the volume of patients assigned to her, why she thought she would be better able to handle her job if she had fewer patients, whether she asked the employer to reduce her workload, and how the employer responded.

Finally, the ALJ wrote that claimant complained about her supervisor to "a coworker," but not to human resources or other management, that her claim "that she thought her fellow medication administrator was also employer's human resources director was not persuasive," and that she should have verified her belief.⁸ The ALJ's statements are not supported by the evidence and additional inquiry is needed. First, claimant identified the person as "human resources" or a "human resources person," and did not claim that the person to whom she complained was the human resources "director."⁹ When the ALJ asked for

³ Order No. 18-UI-113173 at 2-3.

⁴ *Id.* at 3.

⁵ Transcript at 21.

⁶ *Id.* at 11.

⁷ *Id.*

⁸ Order No. 18-UI-113173 at 3.

⁹ Transcript at 16.

that employee's title, claimant said she was "H.R. and, uh, and, uh, a med aide and [] staffing director."¹⁰ The employer's witness confirmed that the employee did, in fact, "work[] part-time as a med aide, part-time as the staffing director or – or in charge of scheduling."¹¹ The record therefore fails to show that claimant unpersuasively claimed the med aide-staffing director was also the human resources director. Additionally, it is not implausible for claimant to have believed that an individual who works as the staffing director was affiliated with human resources, and the employer's witness's testimony about the various roles of the employer's members of management suggests that claimant's confusion about the chain of command at the employer's business was not implausible or unreasonable. We therefore reject the ALJ's conclusion that claimant's testimony about who she believed the employee to be was not persuasive.

Claimant testified that she complained to a human resources person (the med aide-staffing director) about the supervisor, but was told that she could not do anything to help claimant because she did not see the supervisor's behavior.¹² Claimant also testified that the med aide-staffing director "knows her [the supervisor's] personality" and was "also, uh, complaining" about the supervisor, but "cannot do anything."¹³ The ALJ should ask additional questions about what claimant experienced from her supervisor, what she reported to the med aide-staffing director, what the med aide-staffing director told claimant she had experienced with the supervisor, and how claimant knew that the med aide-staffing director had been complaining about the supervisor's behavior. The ALJ should ask claimant what she knew about any such complaints, and whether or not anything changed as a result of the complaints.

Claimant testified that she "was not able to" complain to her supervisor's supervisor "because I know – I know they won't . . . listen to me."¹⁴ The ALJ did not ask claimant to explain the reason she thought the supervisor's supervisors would not listen to her. Claimant testified that she did not speak with the administrator about her supervisor because, according to "the nurses that quit," the administrator would not help her, either.¹⁵ The ALJ did not ask claimant to explain what she learned from the "nurses that quit," or why she thought if the administrator would not help the nurses she would not help claimant, either. The ALJ should have asked claimant why she thought the med aide-staffing director was the only person who might be able to help her deal with her supervisor. The ALJ should ask those questions, give the employer the opportunity to respond, and ask any follow-up questions that develop based upon the parties' testimony at the remand hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant quit work with good cause, Order No. 18-UI-113173 is reversed, and this matter is remanded for development of the record.

¹⁰ *Id.* at 19.

¹¹ *Id.* at 29.

¹² Transcript at 16.

¹³ *Id.*

¹⁴ *Id.* at 19-20.

¹⁵ *Id.* at 20.

DECISION: Order No. 18-UI-113173 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 23, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-113173 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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