

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0833

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124931). Claimant filed a timely request for hearing. On July 31, 2018, ALJ Shoemake conducted a hearing, and on August 6, 2018 issued Order No. 18-UI-114424, affirming the Department's decision. On August 24, 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Lane County Human Resources employed claimant from July 20, 2015 until June 14, 2018 as a full time peer support worker.

(2) Claimant was diagnosed with posttraumatic stress disorder (PTSD) in 2007, and received treatment for the condition throughout her employment. Claimant also had asthma.

(3) During 2017, claimant was disciplined by the employer with a two-week unpaid suspension for having misused work time and funds for personal use. Claimant did not grieve the discipline through her union.

(4) In December 2017, the employer assigned claimant to a new supervisor. On December 29, 2017, claimant and her new supervisor met regarding a five-day training out of town in April 2018. Claimant asked that she be permitted to stay at a different hotel that she felt was safer because it had fewer entrances. The supervisor initially refused claimant's request and stated that they would all stay at the same hotel. Claimant asked for a per diem food allowance that included an amount for lunches because although the meals at the event included vegan and vegetarian options, claimant considered the meals at the event to be inadequate for a vegetarian like herself. Claimant was dissatisfied when the supervisor denied claimant's lunch request because lunches were provided at the training event. Claimant was given permission to purchase her own meals at her own expense if she so desired.

(5) On January 11, 2018, claimant's supervisor sent claimant an email stating that she wanted to meet with claimant regarding a lunch she charged to the employer in 2017 that was not approved by the employer. Claimant spoke with her division manager about the email and told her she was concerned because the division manager had approved the request in 2017, and claimant thought the matter was settled. With the support of her union, claimant met with her supervisor and explained that the division manager had approved the meal. Claimant again thought the matter was resolved. The employer did not discipline claimant for the meal charge.

(6) On January 23, 2018, claimant complained to her division manager that she felt her supervisor was treating her "differently" than other employees by questioning matters that she noticed about claimant's schedule or activities while working. Transcript at 7. The manager listened to claimant's complaint and told claimant she should speak to her supervisor about it because they needed to learn how to work with each other's personalities. Later that day, claimant went to speak with the supervisor, who immediately stated that she "was treating [claimant] differently and she realized that." Transcript at 8. She did not state that she would try to change her behavior.

(7) In April 2018, claimant attended the training out of town and felt uncomfortable around her supervisor because she felt the supervisor was avoiding her. The employer permitted claimant to stay in a hotel of her own choice and received reimbursement for the same amount as other employees who stayed in a different hotel.

(8) On several other occasions during April 2018, claimant felt that her supervisor scrutinized her work activities more closely than those of her coworkers. Claimant did not trust her supervisor because she felt her work could be questioned later by her superiors. Transcript at 16. She experienced panic attacks at the end of April 2018 when she was around her supervisor.

(9) In May 2018, claimant's supervisor asked claimant why she had not reimbursed the employer for the meal they discussed in January 2018. Claimant experienced panic attacks and stress as a result of the implied accusation that she had done something wrong, when she believed her actions had been approved and the matter resolved. The stress also aggravated her asthma. A medical professional did not advise claimant to leave work due to her health concerns.

(10) At the end of May 2018, claimant complained to the employer's assistant director about how her supervisor treated her, and the lunch reimbursement issue. Claimant did not inform the assistant director that the situation was affecting claimant's health. The assistant director initiated an investigation with an independent investigator and a human resources representative. On May 25, 2018, the employer told claimant and her union steward about the investigation.

(11) On June 1, 2018, claimant gave the employer notice that she would quit work on June 14, 2018 because of how her supervisor treated her at work and the impact of work stress on her health.

(12) On June 6, 2018, claimant met with the investigator for five hours and gave a detailed account of her complaints to the investigator regarding the supervisor. Her union representative was present. The investigator told claimant he had other employees to speak with before the investigation concluded. Claimant voluntarily left work on June 14, 2018, before the employer completed its investigation regarding the supervisor.

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) (January 11, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had PTSD, asthma and experienced anxiety and panic attacks, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with these 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.

Claimant testified that her supervisor created a hostile work environment for her by treating her differently than other employees by improperly scrutinizing claimant's work calendar and requests for state expenditures, such as for hotel and meal allowances. Although the supervisor admitted to claimant in January 2018 that she was treating claimant differently, claimant did not allege and the record does not otherwise show that the supervisor's actions were due to discrimination based on an impermissible basis. Claimant herself testified that she felt the new supervisor had "preconceived notions" about claimant based on her past employment and treated her differently based on those ideas, which more likely than not were due to claimant's disciplinary history of misusing work time and funds. Transcript at 7. Because claimant's past work-related conduct could reasonably and permissibly prompt her supervisor to be more careful when reviewing claimant's subsequent work-related conduct, claimant failed to show by a preponderance of evidence that her supervisor treated claimant less favorably than other employees due to an impermissible reason. Moreover, when claimant complained to the assistant director in May 2018 about the supervisor's conduct, the employer initiated an investigation by an independent investigator. Rather than quitting when she did, claimant had the reasonable alternative of waiting for the employer to complete its investigation regarding the supervisor's conduct to see whether the employer would implement changes based on the investigation. Thus, to the extent that claimant left

work because of how her supervisor treated her, claimant did not show that no reasonable and prudent person with the characteristics and qualities of an individual with her impairments would have continued to work for her employer for an additional period of time.

It is undisputed in the record that claimant was having panic attacks and anxiety triggered by her supervisor at work. However, the record does not show that claimant's medical providers recommended that claimant leave work to resolve her health issues. Moreover, when claimant complained to her assistant director about her supervisor in May 2018, claimant did not inform the director about her anxiety and panic. A reasonable and prudent employee who experienced anxiety and panic attacks at work would not have left work without asking the employer to accommodate her health conditions, or without discussing her health concerns with the employer while it investigated the person at work who triggered claimant's anxiety and panic attacks, and giving the employer an opportunity to do so once it completed the investigation.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-114424 is affirmed.

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

DATE of Service: September 26, 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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