

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0926

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92553). Claimant filed a timely request for hearing. On August 28, 2018, ALJ Murdock conducted a hearing, and on September 5, 2018, issued Order No. 18-UI-116078, affirming the Department's decision. On September 25, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant essentially asserted that the hearing proceedings were unfair because on the date of the hearing, the employer "introduced a witness last minute without the proper disclosure in addition to a statement that was submitted without providing this statement to me," which she argued left her with inadequate time to prepare a rebuttal. Written Argument at 1. However, the employer's witness was identified at the start of the hearing, consistent with the procedure set forth in "Notice of Rights" sent to each of the parties with the "Notice of Hearing," and her written statement was not admitted into the record of this case because the witness testified and was available for cross-examination. *See*, Record Document, Notice of Hearing; Audio Record ~ 1:00 to 4:00. We reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties a reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) Joya Women's Healthcare employed claimant as the office manager from February 17, 2017 to July 3, 2018. The employer had two owners, a physician and a business manager. The office had total of five employees.

(2) The physician and business manager had been in a personal relationship but had a falling out that caused the relationship to end. However, they had remained partners in the business and although they occasionally quarreled about business matters they primarily kept to themselves. When they quarreled about business purchases, claimant often found herself in the middle, with the physician advocating for certain purchases for medical reasons and business manager opposing them for cost reasons. Such quarrels, when they occurred, caused claimant stress.

(3) Prior to June 27, 2018, the physician believed she was the majority owner of the business. However, on that day she discovered that she had signed a business document, she believed unwittingly, giving the business manager fifty percent ownership in the business, which created a major disagreement between them. That disagreement created obvious friction between the two of them from that day on, particularly when they interacted with each other, which became an additional source of stress for claimant. The office receptionist and claimant rescheduled patients scheduled to attend non-urgent appointments on June 27, 28 and 29 to allow the physician time to deal with her business difficulty. That activity also caused claimant stress, because she explained to patients that the physician was going through a family emergency rather than a business emergency as justification for the change in appointments.

(4) On June 29, 2018, the physician met with the three office employees who had become aware of the business disagreement and explained that she had “fired” the business manager over the dispute and he would no longer be involved in business’s daily activities. She also explained that she did not know in which direction the business was going to go. Transcript at 25. However, she assured them that as long as they reported for work they would be paid for full-time work, whether she saw patients full-time or not. Transcript at 25. Shortly thereafter, as the physician was leaving the office to obtain legal advice, the business manager entered the office which precipitated an argument between them. After the physician left, the business manager remained and discussed with the office employees the idea of all of them quitting their jobs due to a “hostile work environment,” thereby precipitating a business liquidation he was in favor of, and then using that as a basis for obtaining unemployment insurance benefits.

(5) On Tuesday, July 3, 2018, when the physician came to the office for her morning appointments, claimant quit due to the environment created by the friction between the two owners that she claimed caused her significant stress. Transcript at 4. However, claimant never saw a medical professional for her stress nor discussed the issue with the physician owner in an attempt to explain how the overt friction between the owners was affecting her.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant asserted she quit work “due to a hostile work environment,” explaining “there was quite a bit of arguing between the two owners” that caused her “sleepless nights and...upset stomachs, and just nerves really bad on my end.” Transcript at 4-5. Although the circumstances described by claimant were probably stressful for her, she admitted that they only occurred during “the last couple weeks,” that she never sought medical treatment for her symptoms or even informed the physician owner that she was experiencing health issues as a result of her conflict with the business manager, in an attempt to

mitigate them. Transcript at 4-5. Moreover, days prior to quitting, claimant had been informed by the physician owner that the business manager had been “fired” from the day-to-day operations and that she and the other employees would be paid indefinitely for full time work even if the physician did not see patients full time. Viewing the record as a whole, claimant failed to show that her concerns constituted reasons of such gravity that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time rather than quit immediately without notice and without seeking the advice of a medical professional concerning her symptoms of stress.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she requalifies for benefits by earning at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 18-UI-116078 is affirmed.

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

DATE of Service: November 2, 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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