

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0987

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103840). Claimant filed a timely request for hearing. On October 1, 2018, ALJ Murdock conducted a hearing at which the employer failed to appear, and on October 5, 2018 issued Order No. 18-UI-117767, affirming the Department's decision. On October 12, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Bristol Hospice Oregon LLC employed claimant from April 17, 2018 until August 14, 2018 as a business office specialist II.

(2) The employer's Human Resources Manual expressly prohibited bullying, including making "hostile statements," falsely accusing and punishing "errors" that had not actually been made, verbal abuse, demeaning comments, and yelling. Exhibit 1 at 38. The policy against bullying also prohibited active and passive support for acts of bullying. Exhibit 1 at 39.

(3) Some time before July 2018, the executive director asked claimant to create binder files for the residents' records at the facility where claimant worked. Claimant created the binder files with the necessary sections and claimant understood from her trainers that she was not expected to do more to maintain the binder files. Claimant's understanding was that the on-site clinical registered nurse (RN) would print and add chart notes to the binders. Claimant did not have access to chart notes or information showing when RN visits occurred. Exhibit 1 at 32-33.

(4) In early July 2018, the employer hired a new clinical RN. After the new clinical RN was hired, claimant often worked with only the clinical RN and sometimes with one other subordinate staff member in the office. The executive director, and not the clinical RN, was claimant's supervisor. The executive director had advised claimant to check with her or claimant's mentor, the business office

trainer at the employer's corporate office in Utah, if claimant had questions about performing her work duties.

(5) On several occasions, the clinical RN directed claimant to perform duties that claimant understood from prior instructions from the executive director and claimant's mentor were to be completed by the clinical RN and not claimant. Claimant was concerned about the possibility of patient harm and employer liability if she followed the RN's orders, so she discussed the instructions she received from the clinical RN with the executive director and claimant's mentor to clarify who should perform those duties. They confirmed that the duties the clinical RN had asked claimant to perform were the responsibility of the clinical RN, and not claimant. Claimant told the clinical RN what the executive director and mentor had told her, and the clinical RN told claimant that claimant was incorrect.

(6) Claimant contacted her doctor several times during her employment regarding stress from the workplace and for medication management to help her address her stress.

(7) On July 17, 2018, the employer conducted a job performance evaluation of claimant. Claimant was displeased that the new clinical RN participated in the evaluation, despite having worked with claimant for only two weeks. The clinical RN complained about claimant's response when the RN had asked claimant to perform duties that claimant believed were the clinical RN's responsibility. Claimant received a copy of the evaluation on July 27, 2018. The evaluation graded claimant "below expectations" for her "communication with supervisor [and] fellow employees . . ." Exhibit 1 at 14. Claimant was surprised and disappointed by her overall rating and comments on the evaluation.

(8) On July 30, 2018, the clinical RN asked claimant to complete the patient binders. Claimant responded that she did not understand the RN's request, having already prepared the binders for the clinical RN to use to compile chart notes. The RN became angry with claimant and argumentative and, when claimant asked the RN to explain exactly what task she wanted claimant to complete, the RN replied, "It doesn't matter because you're not going to do it anyway." Audio Record at 8:02 to 8:05. The RN continued to confront claimant, yelled at her, and told claimant that her mentor had given claimant incorrect information and that claimant was responsible for printing and adding chart notes to the binders. Claimant's supervisor came and stood near the clinical RN and claimant, but did not say anything or otherwise attempt to intervene. Claimant felt distressed and began crying in response to the RN's conduct toward her. Audio Record at 9:26 to 9:33, 9:48 to 9:55. The clinical RN continued to yell at claimant and asked claimant "who she thought her boss was." Audio Record at 9:34 to 9:38. Because claimant was upset and crying, she tried to end the interaction by stating that she was not comfortable continuing the discussion at that time. The clinical RN ignored claimant's request and continued to yell at claimant, stating that she thought claimant was "rude and disrespectful and demeaning." Audio Record at 10:23 to 10:26.

(9) In addition to the executive director and clinical RN, claimant sometimes worked with a clinical director at her workplace. Claimant felt the clinical director would not give claimant support because she was a close friend of the clinical RN and had worked with her in the past.

(10) Later on July 30, 2018, claimant asked her mentor whom she should contact regarding a human resources issue. The mentor told claimant to contact the vice president. Claimant sent the vice president an email asking whom she should contact regarding a human resources issue, and the vice president

responded that she should contact the human resources department head. Claimant contacted the human resources department head regarding the incident, and a human resources representative told claimant to submit a “letter of rebuttal” responding to her performance evaluation along with any other concerns.

(11) Claimant had been upset and crying for most of the day on July 30 because of the incident that morning with the clinical RN. Later on July 30, 2018, claimant initiated a meeting with the executive director. Claimant told the executive director, “I think I may have to give notice,” and that “based on the performance review and the situation with [the clinical RN], it seemed as though [claimant] was not who they wanted in that position.” Audio Record at 27:43 to 27:58. The executive director replied, “I’m sorry you feel this way. Maybe you could consider giving thirty days’ notice.” Audio Record at 28:02 to 28:09. The executive director did not offer mediation, support or other options to address claimant’s concerns.

(12) Claimant was not aware of any other available positions with the employer.

(13) On July 31, 2018, claimant gave the employer notice that she would end her employment on August 14, 2018. Claimant sent a rebuttal letter regarding her performance evaluation to human resources on August 2, 2018, after she submitted her resignation. Claimant quit work on August 14, 2018 because of workplace stress and lack of support from the employer.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left 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) (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.

Claimant quit work due to stress from work and a lack of support from the employer. In Order No. 18-UI-117767, the ALJ concluded that claimant quit work without good cause because she did not establish she faced a situation of such gravity that she had no reasonable alternative but to quit work.¹ The ALJ reasoned that claimant had the alternative of giving the human resources department head an “opportunity to address her complaints” before claimant decided to quit work.²

We disagree and conclude claimant faced a grave situation because her working conditions caused her to seek medical attention and changes in her medication to address her stress level, and to experience a crying episode that lasted for multiple hours. There was no evidence to show that claimant’s executive director, mentor, or human resources would do anything to improve claimant’s working conditions, or

¹ Order No. 18-UI-117767 at 3.

² *Id.*

that claimant's rebuttal letter regarding her performance evaluation would be anything but futile, even had claimant submitted it before she gave her notice of resignation. To the contrary, the executive director witnessed the incident during which the clinical RN yelled at and berated claimant for an extended period on July 30 and did nothing to intervene or "constructively attempt to stop" the clinical RN's outburst, which was unnecessarily hostile, personal and prolonged regardless of what the RN understood claimant's patient binder duties to be. *See Exhibit 1 at 39.* Moreover, when claimant met with the executive director later in the day on July 30 and expressed that she was *considering* quitting, the director did not address the incident from earlier that day or offer alternatives to claimant other than claimant leaving work.

Given the apparent climate in the office, it was also understandable, and reasonable, that claimant did not ask the clinical director, who was a friend of the clinical RN, for assistance. When claimant reached out to her mentor, she referred claimant to the vice president, who referred claimant to the human resources department head. The human resources department head did not address claimant's immediate distress and recommended that claimant write a letter of rebuttal regarding her performance evaluation, and "any other concerns."

In sum, we conclude that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to quit where she worked closely with a coworker who yelled at her despite her request to end the conversation and accused her of being "rude and disrespectful" while her supervisor stood by and watched, and where she suffered stress such that she repeatedly sought medical attention for stress, and sought help regarding her working conditions only to be referred on or told to submit her complaints in writing, and where her supervisor offered her no support when she initiated a meeting with her regarding the bullying incident with the coworker. Claimant quit work with good cause, and is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Order No. 18-UI-117767 is set aside, as outlined above.

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

DATE of Service: November 16, 2018

NOTE: 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.

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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