STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 07, 2022

IN THE MATTER OF:
Appeal Board No. 624666

PRESENT: JUNE F. O'NEILL, MARILYN P. O'MARA MEMBERS

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective December 6, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by and on behalf of the claimant and on behalf of the employer. By decision filed July 7, 2022 (A.L.J. Case No.), the Administrative Law Judge granted the claimant's application to reopen 022-12204 and overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a full-time fellowship coordinator for the employer for 13 years until December 3, 2021. Her duties included managing between 10 and 13 programs. She was scheduled to work from 10 a.m. to 6 p.m. but often worked late and on weekends in order to complete her work. The claimant and her supervisor had a good working relationship. Over the years, the claimant had often indicated to her supervisor that she felt overwhelmed by her workload and requested assistance. However, she was not provided same. At some point, the claimant also became the caregiver for her father who had suffered a brain injury. Thereafter, the claimant began to suffer from anxiety and panic attacks. In May 2021, she began to see a

psychiatrist who put her on medication to ease her anxiety. The claimant did not see her psychiatrist again between June and September 2021. The claimant was referred to a psychologist for additional assistance, but she did not continue with her appointments.

In September 2021, the claimant learned she was going to be assigned an additional program and renewed her request for assistance. In October 2021, the employer assigned a coworker to assist the claimant with her work. However, the claimant did not ask her coworker for assistance because she also had a heavy workload. The employer then assigned another employee to assist the claimant. In addition, at the end of October, the claimant's supervisor asked the claimant to supply a list of the areas for which she needed assistance; the claimant did not provide the list.

On or about November 2, 2021, the supervisor met with the claimant to discuss her performance. At that meeting, the claimant agreed that her performance had dropped off because of her increased workload and she requested additional assistance. When the supervisor indicated that management did not see the need for further assistance, the claimant questioned whether management cared about her mental health. After this meeting, the claimant felt anxious about her relationship with her supervisor as she felt it had deteriorated.

On November 8 and 9, 2021, the claimant called out sick. She was scheduled to work on November 10, 2021; and was aware that if she was going to be absent, she was required to call in within one hour of her start time. However, the claimant did not report to work on November 10 and did not call her supervisor to report her absence that morning. She scheduled an appointment with her psychiatrist to discuss her increased anxiety. Her psychiatrist advised her to take a two-week leave of absence but did not advise her to resign. That afternoon, the claimant spoke with the manager of employee relations. The employee relations manager granted the claimant's leave of absence request; he also offered to meet with the claimant and her supervisor upon her return to discuss further assistance with the claimant's workload. The manager further advised the claimant that she could extend her leave by an additional three weeks if needed. The claimant contacted her supervisor that afternoon and informed her that she would be taking a leave of absence until November 30.

On the morning of November 30, the claimant contacted her supervisor and indicated that she wanted to extend her leave. Later that same day, the supervisor issued a final written warning to the claimant for failing to

contact her supervisor as required on November 10. Although the claimant's job was not in jeopardy, the warning prevented the claimant from seeking a transfer for one year. Knowing that she could not request a transfer made the claimant anxious again. As a result, the claimant decided to resign from her position instead of extending her leave and addressing her workload concerns further with the assistance of the employee relations manager. The claimant resigned on December 3, 2021. Upon learning that the claimant had resigned, her psychiatrist questioned her decision.

The claimant appeared at the hearing held on May 27, 2022. However, she did not proceed because her attorney needed time to review the file.

OPINION: The credible evidence establishes that the claimant did not proceed at the hearing held on May 27, 2022, because her attorney needed time to review the file. This constitutes good cause for the failure to proceed. Accordingly, the claimant's application to reopen A.L.J. 022-12204 is granted.

The credible evidence further establishes that the claimant resigned from her position because of her workload and because she disagreed with a warning issued to her by her supervisor. We accept the claimant's credible and uncontroverted testimony that due, in part, to her high workload and what she felt was a deteriorating relationship with her supervisor she suffered from anxiety for which she was under the care of a physician and required prescription medication to ease her symptoms. However, we do not agree that the claimant resigned with good cause for Unemployment Insurance purposes.

The claimant readily conceded that her psychiatrist had recommended only that she take two weeks off from work and had, in fact, questioned the claimant's decision to resign upon learning that she had done so. The claimant further conceded that although the employer provided her with assistance; the option to extend her leave for another three weeks should she need it; and assistance from employee relations to discuss her workload further with the supervisor upon her return from leave, she did not avail herself of these options prior to resigning. We are not persuaded by the claimant's contention that Appeal Board Nos. 591726, 579692, 583725 and 562789 require a finding that claimant resigned with good cause because her pre-existing condition was exacerbated by stress from work. In distinguishing these cases, we note that the claimant's health care provider neither recommended that the claimant resign nor agreed with her decision to do so and the claimant had additional leave time available to her at the time she resigned. We are similarly not persuaded by

the claimant's reliance on Appeal Board No. 560664 since the record herein is devoid of evidence that the claimant's condition had deteriorated such that she was unable to act rationally at the time she made the decision to resign.

As for the warning which precipitated the claimant's decision to resign, the claimant was aware she was supposed to contact her supervisor within one hour of her start time and admittedly did not make contact until well into the afternoon. As such, it was not unreasonable or unjustified for the employer to issue the warning. Moreover, although the claimant felt her relationship with her supervisor had declined, the claimant's testimony did not establish any interactions that were outside the bounds of propriety to provide the claimant with good cause to resign. On the contrary, the record shows that, despite any differences the supervisor may have had with the claimant, the supervisor continued to address the claimant's concerns regarding her workload. It is well-settled that a failure to get along with one's supervisor even in the face of harsh criticism does not provide good cause to resign. Under these circumstances, we conclude that the claimant's voluntary separation was without good cause.

DECISION: The decision of the Administrative Law Judge is modified.

The claimant's application to reopen 022-12204 is granted.

The initial determination, disqualifying the claimant from receiving benefits, effective December 6, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER

MARILYN P. O'MARA, MEMBER