

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0893

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On April 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 143356). Claimant filed a timely request for hearing. On May 7, 2014, ALJ Wyatt conducted a hearing, and on May 15, 2014 issued Hearing Decision 14-UI-17753, affirming the Department's decision. On May 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Payless Longterm Care Pharmacy employed claimant as a phlebotomist and patient care coordinator from March 21, 2010 to March 21, 2014.

(2) Claimant worked for the employer at Options for Southern Oregon (Options), a nonprofit mental health treatment facility. On February 6, 2014, claimant complained to Options and the employer about an Options nurse's behavior toward her.

(3) Unknown to claimant, the nurse notified Options on February 9, 2014 that she was quitting work, effective February 23, 2014.

(4) On February 11, 2014, claimant's supervisor informed claimant that Options' Chief Operating Officer (COO) had asked the employer to discharge claimant for removing items from Options' offices without permission. The employer suspended claimant with pay for one week while the employer conducted an investigation.

(5) On or about February 17, 2014, the employer informed claimant that it had completed its investigation and suspended claimant without pay for one week. The employer informed claimant that when she returned to work, her schedule would change from four 10-hour shifts per week, to five 8-hour shifts.

(6) On February 23, 2014, the Options nurse claimant had complained about quit work.

(7) When claimant returned to work on February 24, 2014, the employer placed her on a performance improvement plan (PIP) for removing objects from Options' offices without authorization, sending non-business related emails to Option's staff, and resisting changes in medication procedures. The PIP set forth the employer's expectations going forward, and stated that claimant was expected to meet those expectations and comply with the employer's policies and procedures for a period of 60 days. On February 25, 2014, claimant agreed to comply with the expectations set forth in the PIP, but included a written statement explaining and defending her behavior.

(8) On March 7, 2014, claimant notified the employer she was quitting work, effective March 21, 2014. On March 10, 2014, claimant asserted that she was quitting work because the employer was retaliating against her for complaining about the nurse by suspending claimant without pay and placing her on the PIP, changing her work schedule, reducing her office space, requiring her to train an unqualified employee to do her job, and making multiple changes in processes and expectations.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit 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) (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 her employer for an additional period of time.

Claimant quit work because the employer suspended her without pay and placed her on a PIP, changed her work schedule, reduced her office space, required her to train an employee whom she considered unqualified to do her job, and made multiple changes in processes and expectations. However, the evidence in the record fails to support claimant's assertion that the employer disciplined her in retaliation for her complaint against a nurse, and not for the reasons stated in the PIP. Nor does it support her assertion that the employer changed her working conditions in retaliation for her complaint against the nurse, and not for legitimate business reasons. Absent a showing of retaliation, we do not find claimant's suspension, PIP, and changes in her working conditions so onerous that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant therefore failed to establish that she quit work with good cause, and is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-17753 is affirmed.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, not participating.

**DATE of Service:** July 2, 2014

**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 website at [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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