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State of Oregon
**Employment Appeals Board**
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

# EMPLOYMENT APPEALS BOARD DECISION

**2014-EAB-0997**

*Affirmed*
*Disqualification*

**PROCEDURAL HISTORY:** On March 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 102313). Claimant filed a timely request for hearing. On May 27, 2014, ALJ Wyatt conducted a hearing, and on June 4, 2014 issued Hearing Decision 14-UI-18948, affirming the Department's decision. On June 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Adventist Health employed claimant as a front office receptionist and a back office assistant from June 6, 2008 until April 18, 2014. Claimant worked at the employer's clinic located in a retirement center and had identification badges for both the retirement center and the clinic.

(2) Sometime before April 14, 2014, claimant wrote a letter on the clinic's stationary to her daughter's landlord complaining that mold in the daughter's apartment was aggravating the daughter's asthma. Claimant signed the letter with her own name. Sometime before April 14, 2014, claimant's supervisor learned about the letter and read it.

(3) On April 14, 2014, claimant's supervisor spoke with claimant about the letter and told her its contents "might" violate the employer's policies and the confidentiality requirements of the federal Health Insurance Portability and Accountability Act (HIPAA). Transcript at 7. Claimant did not think that the letter violated the employer's policies or HIPAA. Claimant's supervisor told claimant that he did not want her to report to work until he had discussed the matter with the human resources department and a decision was made about whether the letter violated either the employer's policies or HIPAA. The supervisor told claimant that she was placed on administrative leave until he contacted her and that he would do so in the next couple of days. Transcript at 20.

(4) On April 15, 2014, claimant left a voicemail message for her supervisor after the end of the business day inquiring whether she should report for work on April 16, 2014. The supervisor replied by text message and told claimant not to report for work and "I'll keep you posted." Transcript at 8.

(5) Sometime between April 15 and 18, 2014, claimant learned from a coworker that emails sent to her through the employer's email system were no longer deliverable. Shortly after, claimant tried to access her work email online and was unable to do so. Sometime before April 18, 2014, the employer determined that it was going to discharge claimant for writing the letter to her daughter's landlord since it had concluded that, in the letter, claimant had impersonated a nurse and had discussed the daughter's medical condition in a way that violated HIPAA. The employer did not tell claimant that it had made a decision or what it had decided.

(6) On Friday, April 18, 2014, claimant's supervisor sent a text message to claimant asking her to meet with him at the employer's premises on Monday, April 21, 2014. The supervisor intended at that meeting to tell claimant that she was discharged and to conduct an exit interview. The supervisor had not alluded in his text message to what he wanted to discuss at the meeting. Claimant very quickly sent a reply text message to her supervisor stating that she did not want to attend a meeting where she was going to "walk into an ambush." Transcript at 21; *see also* Transcript at 17. A very few minutes later, claimant sent another text message to her supervisor telling him that she was aware that her work email was disabled and stating that the supervisor had discharged her "without the courtesy of telling me in person." Transcript at 11; *see also* Transcript at 21. Claimant continued in the text message to tell the supervisor that she was not going to attend the meeting on April 21, 2014, that she would turn in her work keys and her work identification badge and that she wanted her final paycheck delivered to her through the mail. The supervisor responded to claimant's text message by inquiring whether she was going to turn in both of her identification badges. By the text message that she sent to the supervisor on April 18, 2014, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's discharge. If the claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Although the employer had already decided that it was going to discharge claimant by April 18, 2014, it had not yet told this to claimant or taken any steps that unambiguously demonstrated this intention. That claimant's work email was no longer functional might have been due to any number of reasons, and it was not reasonable for claimant to infer that it alone, or combined with the three day time lag in her supervisor's communications with her, meant that she was discharged. However, by the text message that claimant sent to her supervisor, claimant evidenced her intention not to attend the April 21, 2014 meeting, and by stating that she was turning in her keys and identification badge and requesting her final paycheck, she evidenced an intention, at that time, to end her work relationship with the employer in advance of the April 21, 2014 meeting. Since, without claimant's action in sending the text message of April 18, 2014, the work relationship would have continued for three more days, claimant's work separation was a voluntary leaving on April 18, 2014.

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 contended at hearing only that, on April 18, 2014, she thought she had already been discharged and composed her text message to her supervisor accordingly. Transcript at 9, 11, 12, 17. Claimant vigorously denied quitting work for any reason, including avoiding an anticipated discharge. Transcript at 14. Reviewing the evidence from an objective perspective, claimant did not, as discussed above, reasonably know on the day that she quit work, April 18, 2014, that she was going to be discharged on April 21, 2014. Nor on April 18, 2014 did claimant know with reasonable certainty that her discharge was imminent. *See e.g. Megan Lenzen* (Employment Appeals Board, 2104-EAB-0266, March 18, 2014) (claimant did not have good cause to leave work when, although she thought she was going to be discharged, she did not show that her discharge was reasonably certain, inevitable and imminent). Accepting claimant's contentions that she firmly believed she had violated no policies by sending the letter to her daughter's landlord, a reasonable and prudent person would have defended what she had done at the April 21, 2014 meeting rather than concluding that she needed to quit work. Transcript at 28, 29, 31, 32-33. A reasonable and prudent person, who wanted to remain employed, would not have quit work to avoid being "ambushed" at the April 21, 2014 meeting, which we interpret, in this context, as being required to explain why she had written the letter to her daughter's landlord and risk being criticized for the letter that she had composed. Transcript at 31. Claimant presented no evidence that the anticipated "ambush" was a grave reason to leave work. On the facts that she presented, claimant did not demonstrate that, as of April 18, 2014, no reasonable and prudent person would have continued to work for the employer .

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

**DECISION:** Hearing Decision 14-UI-18948 is affirmed.

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

**DATE of Service: <u>July 16, 2014</u>**

**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. 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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