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

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1082

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121931). Claimant filed a timely request for hearing. On May 27, 2014 ALJ Frank conducted a hearing, and on June 13, 2014 issued Hearing Decision 14-UI-19615, affirming the Department's decision. On June 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument interspersed with new information and which also included a new email from a representative of the American Association of Medical Assistants. Claimant failed to certify that she provided a copy of her argument or this email to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant also did not explain why she was unable to offer the new information during the hearing, and otherwise failed to show that factors or circumstances beyond her reasonable control prevented her from offering that information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Because claimant did not comply with these regulations, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Claimant also contended in her written argument that the ALJ impermissibly took into account when reaching his decision certain hearsay evidence that the employer presented at hearing. Written Argument at 2. However, OAR 471-040-0025(5) (August 1, 2004) authorizes an ALJ to consider hearsay evidence if it is "of a type commonly relied upon by reasonably prudent persons in the conduct of serious affairs." Claimant did not show that there was anything unreliable in the hearsay evidence that the ALJ considered. Claimant also raised various objections to the fairness of the hearing, including that, at one point, the ALJ tried to move the hearing along and claimant interpreted the ALJ's comment as placing a "limit on [the] time [of the hearing];" that, since the office manager was not a witness at the hearing, claimant was deprived of an opportunity to cross-examine that witness; and that the ALJ did not

allow claimant to call certain witnesses to testify on her behalf at the hearing. Written Argument at 2, 3. This was a lengthy hearing, with much testimony about matters that the parties wanted to address but that were not particularly relevant to the legal issue before the ALJ. EAB reviewed the hearing record in its entirety. The record shows that the ALJ did not abuse his discretion by the manner in which he conducted the hearing. The record further shows that the ALJ inquired fully into the matters at issue and gave all parties 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) Geneva Health Center & Urgent Care Clinic employed claimant from March 23, 2011 until March 17, 2014. Claimant was last employed as lead medical assistant (MA) and x-ray technician.

(2) During claimant's employment, claimant observed that there were ants in the workplace. Claimant did not like the manner in which the employer's co-owner addressed that problem. The employer did not provide meal or rest breaks to claimant and other employees when the patient flow did not allow for those breaks. The employer believed that it was exempt from state laws governing breaks because it was an urgent care facility.

(3) Some months before March 17, 2014, the employer hired an office manager who was expected to supervisor claimant in the performance of non-medical tasks and in her interactions with other staff. The office manager was not trained in providing medical treatment. Claimant thought that the office manager's attempts to supervise her intruded into the manner in which she provided medical care. Claimant resented supervision from the office manager and thought that the office manager harassed and bullied her.

(4) On occasions after the new office manager was hired, the office manager and the employer's co-owner discussed with claimant the manner in which she treated the staff, especially subordinate MAs. They thought that claimant was overly harsh and angry with her subordinates and that she treated them "very badly." Transcript at 38. Claimant disagreed.

(5) In approximately December 2013, claimant noticed that the employer had some medicines and medical supplies for patient use that, based on packaging, was going to be used after the applicable product expiration dates. Claimant refused to administer those medicines to patients or to use those supplies and threw them away. The employer did not discipline claimant for doing so.

(6) Sometime in January 2014, claimant was out of state on vacation. The office manager called claimant when she was on this vacation to discuss, among other things, certain negative comments that claimant had supposedly made in the workplace and how claimant had handled some issues with subordinate staff. Claimant thought that the manager unfairly "accused" her during this call. Transcript at 22.

(7) On approximately February 12, 2014, claimant and her husband met with the employer's physician to discuss claimant's workplace concerns. Claimant told the physician that she was unhappy with being supervised by the office manager. The physician told claimant that the office manager should not be supervising the manner in which she provided medical treatment, and that claimant needed to report directly to him if she developed concerns about medical or treatment issues. Claimant interpreted the

physician's comment to mean that the physician, and not the office manager, was going to supervise all of her behavior in the workplace. The physician also made comments that claimant interpreted to mean that the physician intended to meet with her regularly, every Wednesday, to discuss any workplace concerns she might have. The physician never met regularly with claimant on Wednesdays or on any other days. Claimant did not ask the physician to begin meeting with her on Wednesdays. At the February 12, 2014 meeting, claimant did not mention any issues relating to the use of expired medicines or supplies in the workplace or any rest or meal breaks to which she might be entitled.

(8) On Thursday, March 13, 2014, claimant reported for work and attended a morning staff meeting. At the staff meeting, claimant told one of the employer's co-owner's that she believed she was entitled to rest and meal breaks during the work day. The co-owner told claimant that she had consulted with the Oregon Bureau of Labor and Industries (BOLI) and determined that the employer was within an exemption to the laws requiring workplace breaks because of the nature of its business in providing urgent care. Claimant did not disagree that the employer was exempt from the requirement to provide breaks, but stated that she was entitled to receive pay during the period set aside for her lunch break. Until this staff meeting, the co-owner was not aware that claimant was not receiving pay during any lunch breaks that she worked. Transcript at 41, 42. Either during the staff meeting on March 13, 2014, or shortly after it, claimant discovered that some medical equipment and materials that she often used had been moved from her work area to another office location. Claimant became very upset and angry. Claimant raised her voice in front of other staff members and loudly said that she was not being "respected" in the office. Transcript at 26, 27. The co-owner agreed to arrange for the return of the equipment and supplies to claimant's work area. At some point during or shortly after the conversation about the moved equipment, claimant commented that the office manager was "out to get her" and "everybody was out to do something to her." Transcript at 28, 29. The co-owner called the office manager, who was working that day in another of the employer's clinics, and asked the office manager to come to the workplace to meet with her and claimant in an attempt to defuse claimant's suspicions. The co-owner and the office manager met with claimant during her lunch break. The main focus of their discussion with claimant was to persuade claimant that the office manager was not her enemy. During the discussion, the office manager commented to claimant that other employees had complained about her. Claimant thought the office manager was referring to her angry behavior earlier that day during or shortly after the staff meeting. After their discussion was concluded, claimant approached some staff members to apologize for any complaints they might have made about her. The staff did not know what claimant was talking about. Claimant concluded that the office manager had lied to her about complaints about her behavior.

(9) On March 18, 2014, claimant notified the employer that she had quit work effective March 17, 2014. As the reasons for her decision to quit, claimant cited that the physician had not followed through on the statements that he made on February 12, 2014, and that claimant thought that she was the object of the office manager's "bullying, derogatory accusations, harassment and untruthfulness." Exhibit 2 at 13. Claimant also mentioned her belief that the employer was not following "labor laws" and had engaged in "OSHA violations." *Id.*

CONCLUSIONS AND REASONS: Claimant voluntarily left 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.

At hearing, claimant raised a wide range of alleged dissatisfactions with the workplace, without linking most of them to her decision to quit work. The sole incident which claimant tied to her decision to leave work was the equipment relocation on March 13, 2014, about which claimant testified she would not have quit work on March 17, 2014 if the equipment had not been moved. Transcript at 18. Claimant did not dispute that the employer moved the equipment to another location for purposes of better organizing the office and did not dispute that the co-owner agreed to and did move the equipment back to claimant's work area after claimant complained. Transcript at 18, 26. A reasonable and prudent person, exercising ordinary common sense, would not have concluded that she needed to leave work over such a trivial incident, particularly when the employer so promptly corrected the situation in response to claimant's objection.

To the extent that claimant left work because the physician did not meet with her every week as understood he was going to after the February 12, 2014 meeting, or because the office manager continued to supervise her in performing non-medical tasks after the February 12, 2014 meeting, claimant did not demonstrate that either of these circumstances was a grave reason to leave work. Transcript at 13. Claimant did not testify that she had issues she wanted to raise with the physician at any such meetings or that she was unable to speak with the physician about any pressing issues unless the meetings were held. Furthermore, claimant admitted that she did not ask the physician to start meeting with her as she understood he had promised. Transcript at 12, 14. With respect to claimant's continued supervision by the office manager in the non-medical aspects of her performance, she did not show that she was harmed by the nature of that supervision. While claimant might have preferred to be relatively autonomous when performing non-medical tasks in the workplace, it does not appear such supervision was oppressive, onerous or burdensome. On these facts, a reasonable and prudent person, exercising ordinary common sense, would not have concluded that she needed to leave work because the physician did not take the steps that she understood he was going to take after the February 12, 2014 meeting.

To the extent that claimant left work based on her contention that the employer had some expired medicines and supplies in the workplace, claimant did not establish, more likely than not, that the employer condoned the use of expired medicines in light of the rebutting evidence presented by the employer's co-owner. Transcript at 7, 8, 15, 36. Moreover, if claimant reasonably had concerns about the use of expired medicines or supplies in the workplace, she likely would have brought it up with the physician when she met with him on February 12, 2014 to discuss her issues with the workplace. Claimant did not present evidence that she raised this concern with the physician during that meeting. *See* Transcript at 10. Although claimant contended that she had concerns that using expired medicines or supplies in the workplace might jeopardize her state certification as a medical assistant, she also testified she did not use the expired products and threw them away. Transcript at 7, 15. If claimant refused to administer the products, the basis on which she risked her credential is not clear. Given the

conflicting evidence about whether expired medicines were used, and claimant's adamant testimony that she never used them, claimant failed to carry her burden to establish that the employer condoned their use or that her state certification was in jeopardy as a result. Claimant did not establish that this ground reasonably constituted a grave reasons for her to leave work.

To the extent that claimant left work based on dissatisfaction with the employer's meal and rest breaks, she also did not establish that this was a grave reason to leave work. Although claimant generally contended that she brought up complaints about the employer's break policy on several occasions with the employer, at hearing she narrowed the focus of her objection to the employer's failure to pay employees for the meal breaks that they missed, and appeared to concede that the employer fell within an exception to the state requirement of providing breaks. Transcript at 16, 40; OAR 839-020-0050(4). The only specific evidence that claimant presented of stating this concern to the employer was that she had done so during the staff meeting on March 13, 2014, only four days before she quit work. Transcript at 16. A reasonable and prudent person, exercising ordinary common sense, would not have concluded that she needed to leave work over an alleged failure to be paid for working through her lunch break unless this practice persisted after the employer's management had reasonable notice of it. Claimant left work before the employer had reasonable notice and a reasonable opportunity to take steps to correct its practice.

To the extent that claimant left work based on the behavior of the office manager, the evidence that claimant presented about the allegedly objectionable behavior was conclusory and general. *See* Transcript at 20, 21, 22. Although claimant contended that the office manager falsely told her on March 13, 2014 that other employees had complained about certain behavior of hers, it was not clear from the testimony that the office manager was referring to the particular incident that claimant thought she was or was referring more generally to other employee complaints. Transcript at 20, 29, 30. Claimant's did not demonstrate that the office manager was intentionally lying to her, rather than that she simply misunderstood which complaints the office manager was addressing. Otherwise, claimant merely contended that the office manager's behavior was "totally harassment and derogatory" and "accusatory." Transcript at 21, 22. Although a supervisor's behavior may be good cause to leave work if it is "abusive" or creates on ongoing "oppressive" work environment, claimant must present specific evidence establishing that the supervisor's behavior met that standard. *See e.g. McPherson v. Employment Division,* 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits); *Beth A. Jackson* (Employment Appeals Board, 13-AB-0502, April 2, 2013) (ongoing unwanted sexual advances and touching despite making complaints); *Brenda A. Kordes* (Employment Appeals Board, 12-AB-3213, January 8, 2013) (ongoing sexual harassment); *Stephen G. Wilkes* (Employment Appeals Board, 12-AB-3173, December 14, 2012) (ongoing verbal abuse despite complaints); *James D. Hayes* (Employment Appeals Board, 11-AB-3647, February 9, 2012) (sexist and ageist remarks); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor’s ongoing verbal abuse and fits of temper); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management’s ongoing ageist comments and attitudes); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (supervisor’s regular fits of temper and verbal abuse). Claimant did not present sufficient specific evidence to show that the supervisor's behavior rose to the level set forth in the decided cases as establishing good cause to leave work.

Based on the evidence in the record, claimant did not show good cause for leaving work when she did on any of the grounds that she contended. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-19615 is affirmed.

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

DATE of Service: August 6, 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. 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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