

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1357

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 125330). Claimant filed a timely request for hearing. On July 14, 2014, ALJ Seideman conducted a hearing, and on July 22, 2014 issued Hearing Decision 14-UI-21912, affirming the Department's decision. On August 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon Occupational Medicine, Inc. employed claimant as a medical assistant (MA) and a limited x-ray technician from August 6, 2012 until May 19, 2014.

(2) A few weeks before May 16, 2014, the medical office at which claimant worked experienced a turn-over in employees. The employer hired a new receptionist, a new MA, a new registered nurse and a new office manager. Claimant was assigned principal responsibility for training these new employees in the employer's procedures. It was difficult for claimant to handle her usual work duties as well as these training responsibilities. At times, claimant felt "overwhelmed." Transcript at 6, 8. Claimant thought that the training of the new office manager should have been assigned to the employer's office administrator or to the employer's assistant office manager.

(3) Claimant thought that the time spent she spent training the new office manager diverted her from training the other new employees and interfered with performing her regular job duties. Claimant became irritated with the new office manager because the new manager wanted to "jump in" and try to perform work before she was trained in an area. Transcript at 7. Claimant thought that the new office manager's eagerness caused "conflict" and more work for claimant. Transcript at 7. Claimant did not "see eye-to-eye" with the new office manager, and disliked that the employer considered the new office manager to be claimant's supervisor before she was fully trained. Transcript at 7.

(4) On Friday, May 16, 2014, the new office manager interrupted claimant to ask questions when claimant was with a patient providing treatment services. Claimant was abrupt and short in her response

to the office manager. Claimant told the office manager that the office manager should prepare written lists of her questions and that claimant would determine their urgency and the appropriate priority for addressing them. The office manager told claimant, "I don't really like your attitude." Transcript at 8. Claimant responded that she "had a lot on [her] plate" and that she was handling the training for several employees at the same time. Transcript at 8. Later in the day, the new office manager told claimant to take the weekend and think about how the employer could change things to make claimant "happy." Transcript at 9.

(5) On Monday, May 19, 2014 at around 10:30 a.m., claimant met with the new office manager to discuss what claimant thought was going to be her proposals for making her job less difficult. Instead, the new office manager gave claimant a written warning for the way in which claimant had spoken to her on May 16, 2014. Claimant read the warning, did not agree with it and thought it was "not fair." Transcript at 10. Claimant was very angry and upset and refused to sign the warning. Transcript at 11, 15, 23. Claimant tossed the warning on a desk or at the office manager. Claimant abruptly left the meeting. Claimant immediately retrieved her purse and her lunch and started to leave the workplace in the middle of her shift without notifying or obtaining the permission of a supervisor. As she was leaving the workplace, claimant stated to her coworkers, "Fuck this place, I quit. Fuck that bitch, I'm not going to listen to her shit anymore." Transcript at 23.

(6) By the manner in which claimant left the workplace on May 19, 2014, the employer concluded that claimant had quit work. After May 19, 2014, the employer's office administrator tried to contact claimant by phone, but was not able to do so because claimant's voicemail was full. The office administrator then sent text messages to claimant to which claimant did not respond. On approximately May 20, 2014, claimant called the assistant office manager to ask if she should report for work the next day and to learn "if I was suiting up the next day." Transcript at 11. The assistant office manager told claimant not to show up and that the office administrator would contact her. The administrator arranged a meeting with claimant and the employer's owner on May 21, 2014. At that meeting, claimant was given her final paycheck.

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

The first issue this case present is the nature of claimant's work separation. If 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).

The employer contended that claimant quit work when she left the workplace on May 19, 2014, and evidenced that intention by the statements she made when leaving the workplace, including that she was quitting work. Transcript at 15, 27, 30. In contrast, claimant contended that she did not quit on May 19, 2014, did not make the statements that the employer's witness, her coworker, testified that he had heard her make and that the employer discharged her at the May 21, 2014 meeting. Transcript at 12, 24, 27. Absent a reason to conclude otherwise, the coworker's testimony is entitled to significant weight because, as distinct from claimant and the office administrator, the coworker was relatively disinterested in the outcome of this matter. Also militating in favor of a conclusion that claimant intended to quit work when she left the workplace on May 19, 2014 is claimant's concession that she called the assistant

office manager on May 20, 2014 to ask "if I was suiting up the next day." Transcript 11. Based on claimant's account of the incident on May 19, 2014, there was no reason for her to be uncertain about her work status. The most plausible explanation underlying claimant's inquiry was that she had done or said something when leaving the workplace on May 19, 2014 that she thought that the employer had objectively interpreted as resignation, such as making the statements that her coworker testified that she had made. Given these facts, it is more likely than not that claimant made the statements that her coworker's attributed to her on May 19, 2014, and by those statements, objectively manifested an intention to quit work that the employer reasonably interpreted as such. Although it appears that by claimant's May 20, 2014 phone call to the assistant office manager, claimant had in the interim since May 19, 2014 changed her mind about quitting, that reconsideration does not change her original intention as expressed on May 19, 2014. Despite claimant's attempt to rescind her resignation, the employer was under no obligation to agree to the rescission and was entitled to reject it and to accept claimant's original resignation without changing the nature of the work separation. *See e.g., Counts v. Employment Department*, 159 Or App 22, 26 976 P2d 96 (1999) (when claimant gave notice that he was quitting and the employer later refused to accept his attempted rescission of his resignation, the work separation remained a voluntary leaving). Claimant's work separation was a voluntary leaving on May 19, 2014, when she left the workplace and expressed that she was quitting.

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.

Because claimant took the position at hearing that she was discharged, she did not present any clear reasons why she might have left work. From the record, it appears that claimant was displeased at having to train so many employees, but she did not present evidence from which it can be inferred that the demands of performing the training constituted a grave reason compelling her to leave work, such as, for example, that it jeopardized her physical or mental health or that, for some other reason, it caused significant harm to her or to some legitimate interest. Transcript at 6-10. From the sequence of events in the record, it appears, most likely, that claimant left work because she was angry at receiving the warning from the office manager on May 19, 2014. Transcript at 10-11. Although claimant might have thought that the warning was "not fair," receiving a single warning that one believes is not merited is not an objectively grave reason to leave work, particularly when claimant admitted that she had been "short" with the office manager in the interaction that gave rise to the warning. Transcript at 8, 9, 10. Claimant did not meet her burden to show that there were objectively grave reasons for her to leave work, and that no reasonable and prudent person would have continued to work for the employer after May 19, 2014.

Claimant did not demonstrate that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-21912 is affirmed.

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

DATE of Service: September 16, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.