

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1788

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On October 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 85334). Claimant filed a timely request for hearing. On November 6, 2014, ALJ Triana conducted a hearing, and on November 7, 2014 issued Hearing Decision 14-UI-28401, affirming the Department's decision. On November 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Daniel Song DMD PC employed claimant as a dental assistant from October 1, 2013 to September 18, 2014. Claimant worked for the employer three days per week.

(2) On September 16, 2014, the employer's office manager told claimant the employer was discharging the dental hygienist. Later that day, the office manager told claimant that the employer was going to post an advertisement for claimant's job because the employer paid claimant too much money. The employer's owner and dentist left the office before claimant had a chance to discuss the matter with him.

(3) Claimant mistakenly believed the employer intended to find someone to replace her, and then discharge her. In fact, the employer intended to hire another dental assistant to work one day per week, and have claimant work two days per week. The employer was closed on September 17, 2014, and claimant did not attempt to contact the owner that day to clarify her employment status.

(4) When claimant reported for work on September 18, 2014, she told the owner she knew the employer was looking for someone to replace her. Claimant asserted that she was so "sickened" about losing her job that she believed it was best if the owner hired a temporary employee, and that claimant would stay and work until the temporary employee arrived to relieve her. Transcript at 12. The owner believed claimant intended to quit work that day, and asked claimant to work for the employer for two more weeks. Claimant did not answer. The owner believed claimant's failure to answer confirmed that she was quitting work that day. When claimant attempted to seat a patient, the owner told her he would do it himself, and told her to "go." Transcript at 26. Claimant believed she was discharged, and left work.

(5) Claimant did not return to work after September 18, 2014 or contact the employer to clarify her employment status.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit work without good cause.

OAR 471-030-0038(2)(b) (August 3, 2011) provides that if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge.<sup>1</sup> If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a). 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.

Despite the miscommunications between claimant and the employer’s owner, the record shows that claimant could have continued to work for the employer after September 18 if she had agreed to the owner’s request that she work for another two weeks. Because claimant could have continued to work for the employer for an additional period of time, the work separation is a quit, and not a discharge. Although claimant believed the employer intended to discharge her after finding someone to replace her, she did not assert or show that no reasonable and prudent person in her situation would have agreed to work another two weeks, and continued to work for the 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-28401 is affirmed.

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

**DATE of Service:** December 24, 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

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<sup>1</sup> “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

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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