

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1794

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92144). Claimant filed a timely request for hearing. On October 29, 2014, ALJ Lohr conducted a hearing, and on October 31, 2014 issued Hearing Decision 14-UI-28008, affirming the Department's decision. On November 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Columbia Community Mental Health employed claimant as a mental health counselor from August 28, 2011 to August 29, 2014.

(2) During the first year of claimant's employment, claimant received few if any complaints about his work performance from his supervisor although that supervisor expressed concerns about claimant's documentation of client treatment sessions in his annual performance evaluation. Audio Record ~ 37:30 to 38:15. However in 2012, a new supervisor asked claimant for his opinion regarding how the new supervisor had handled a client interaction and claimant effectively told the supervisor that in his opinion, he "did not handle it very well." Audio Record ~ 9:10 to 10:00. After that incident, claimant believed the supervisor "retaliated" against him for his statement by singling him out for unjustified criticism of his work performance and requiring him to meet with him more frequently than other counselors under his supervision.

(3) In May 2013, claimant's new supervisor complained to claimant in writing that he was dissatisfied with the timeliness and frequency of the client notes he was entering into the employer's computer system. Claimant complained to the human resources manager about his supervisor's complaint and perceived problems with their work relationship. At that time, the human resources manager met with claimant and his supervisor together about their mutual concerns. A spread sheet was set up to assist claimant in timely entering his notes which the human resources manager hoped would help to resolve both issues.

(4) However, in August 2013 claimant was issued a “corrective action” by his supervisor for failing to meet with clients on a consistent basis, meet deadlines for documentation of client sessions and complete assigned tasks in a timely manner. Claimant was placed on a work plan with specified performance goals. Audio Record ~ 32:45 to 33:45. Shortly thereafter, claimant complained to the employer’s internal investigator that he was being discriminated against by his supervisor. After the resulting investigation was completed, claimant’s discrimination claim was found to be “unsubstantiated.” Audio Record at 34:00 to 35:15. On August 19, 2013, the human resources manager sent claimant an Oregon Bureau of Labor and Industries (BOLI) complaint form in the event claimant wanted to pursue his claim with that state agency. Claimant’s request for a new supervisor was denied and claimant did not pursue a claim with BOLI. After placing claimant on the work plan, the employer did not further discipline regarding performance issues.

(5) In early August 2014, a supervisor from another facility met with claimant and his supervisor about a reported problem with a client claimant had treated and claimant’s work performance with regard to that client. Following the meeting, claimant became upset with his supervisor because he believed he failed to defend him at that time despite knowing how hard claimant had worked with the client. Claimant did not complain about his supervisor’s conduct to the employer.

(6) On or about August 15, 2014, claimant notified the employer in writing that he was resigning on August 29, 2014 without stating a specific reason for his decision. On August 29, 2014, claimant quit because he believed his supervisor continued to retaliate against him for the comment claimant made to him in 2012, was “stressed out” by his supervisor’s lack of support toward him during the meeting that month and “couldn’t take it no more.” Audio Record ~ 23:30 to 24:45.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person in his circumstances would have continued to work for the employer for an additional period of time.

Claimant left work in part because he believed his supervisor’s failure to defend him during the August 2014 meeting constituted continuing retaliation against him for the comment he made to the supervisor in 2012. Claimant failed to establish good cause for leaving work for that reason. Claimant did not assert or show that he was facing any discipline for his treatment of the client in question, his 2013 complaint regarding retaliation for that reason had been found to be “unsubstantiated” by the employer and claimant chose not to pursue an additional complaint with either the employer or BOLI in August 2014 despite the employer’s reasonable responses to earlier complaints. On this record, claimant failed to establish that quitting work for perceived retaliation constituted a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in his

circumstances and interested in maintaining his employment, would have concluded that there was no reasonable alternative but to leave work when he did.

Claimant also asserted he left work because he was “stressed out” by his supervisor’s lack of support for him during the August 2014 meeting with the other supervisor and “couldn’t take it no more.” Viewed objectively, it is not unusual for employees to experience stress while at work based either on work performance criticisms, justified or not, or other conflicts with supervisors and the mere existence of such stress, without more, does not justify an individual to quit his or her job and receive unemployment insurance benefits. Here, claimant did not assert or show that he discussed his concerns in August 2014 with anyone higher up in management, that the stress he experienced at that time substantially affected his physical or mental well-being at or outside of work or that his stress was so substantial that he sought treatment from a medical provider. Accordingly, claimant failed to establish that no reasonable and prudent person in his circumstances would have tolerated the working conditions described and continued to work for the employer for an additional period of time.

Claimant had the burden to show that he quit work when he did with good cause as defined under OAR 471-030-0038(4). Claimant failed to meet his burden and is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 14-UI-28008 is affirmed.

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

**DATE of Service:** January 5, 2015

**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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