

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0237

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80206). Claimant filed a timely request for hearing. On February 9, 2015, ALJ R. Davis conducted a hearing, and on February 10, 2015 issued Hearing Decision 15-UI-33833, affirming the Department's decision. On March 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Martin L. Bassett employed claimant as a medical assistant in his medical practice from February 2, 2013 until December 15, 2014.

(2) Claimant worked under the supervision of the employer's office manager. Before November 25, 2014, claimant thought that she had a good relationship with the office manager. Claimant would speak to the office manager at least three to five times a day about questions she had or to discuss her workplace concerns.

(3) On November 25, 2014, another of the employer's medical assistants unexpectedly did not report for work because her brother had been involved in a serious automobile accident and was hospitalized in a coma. When claimant became aware that the other medical assistant was going to be absent, she was "quite upset" because she thought the medical assistant was chronically absent without good reason. Audio at ~12:48. From her office, the office manager observed claimant and perceived that, for some reason, claimant was "storming throughout the office" as she went about her duties. Audio at ~31:50. As claimant later walked down the office hallway to the break room, she passed the office manager's office and the office manager stepped out to speak with claimant about the source of her distress. Audio at ~31:12. Claimant was "very vocal" with the office manager when she stated that the other medical assistant "continuously call[ed] in sick" and the result was an unanticipated increase in claimant's workload. Audio at ~13:32. As they walked down the hallway, the office manager told claimant that

the other medical assistant was absent due to an unexpected family emergency. As they entered the break room, the office manager discussed the situation "in detail" with claimant and mentioned to her that "people cannot control being sick," that claimant was "singling out" the absent medical assistant for criticism, that the other medical assistants had provided coverage for claimant without complaint when she was absent and that claimant was not being a "team player." Audio at ~13:57, ~14:14. The office manager also told claimant that the employer was considering hiring a fourth medical assistant to provide floating coverage when one of the three regular medical assistants was absent, but claimant said that she did not think that was necessary and that she "just needed the one [medical assistant] that's here to show up." Audio at ~34:18. The office manager was frustrated by what she thought was claimant's unwillingness to accept her efforts to address claimant's concerns. Audio at ~34:46. Claimant then moved toward the break room door while the office manager was still speaking with her. The office manager placed her hands on claimant's shoulders to stop her from leaving. Claimant "very quickly" stepped away from the office manager's hands and continued her movement toward the break room door. Audio at ~14:35. The office manager then moved toward the door along with claimant and claimant perceived that the office manager was trying to "block" to the doorway. Audio at ~15:05, ~16:00. The office manager continued speaking to claimant for a short period and then claimant left the break room. In total, the office manager and claimant spoke in the break room for approximately two minutes. Audio at ~16:14.

(4) On November 25, 2014, after claimant left the break room, she tried to locate the employer's physician to discuss the earlier interaction with the office manager. Claimant met with the physician after he was finished seeing patients, described the incident to him as she perceived it and told him that she thought the office manager's behavior had been "inappropriate" and "unprofessional." Audio at ~17:08. The physician told claimant that he was going to speak with the office manager. On approximately November 26, 2014, the physician and the office manager spoke about the interaction between claimant and the office manager. After listening to the office manager, the physician thought that claimant's description of the incident, and her reaction to it, were exaggerated. Audio at ~37:50.

(5) By December 3, 2014, the physician had not informed claimant that he had spoken with the office manager about the incident on November 25, 2014. On December 3, 2014, the physician's day off, claimant sent a text message to him asking him to come into the office to again discuss the November 25, 2014 incident. The physician did not respond. On December 10, 2014, claimant sent an email to the physician again describing her perceptions of the November 25, 2014 incident and requesting that a quick "resolution" to it be reached. Exhibit 1 at 2. On December 12, 2014, when the physician had not responded to claimant's email claimant decided to quit work.

(6) Between November 26, 2014 and December 15, 2014, there were no further incidents between claimant and the office manager. Audio at ~18:04. During this period, claimant avoided contact with the office manager. Claimant did not tell the office manager that she perceived the office manager's behavior on November 25, 2014 to have been offensive. Audio at ~18:04.

(7) On December 15, 2014, claimant submitted her resignation to the employer, effective immediately.

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.

Claimant contended that the two minute encounter on November 25, 2014 in which the office manager briefly touched her shoulders and in which she perceived that the office manager blocked her exit from the break room was so offensive and traumatic that she could no longer remain working for the employer because she was "incredibly uncomfortable" in the workplace and no longer felt "safe." Audio at ~15:50, ~25:16. However, claimant did not contend that she had any similarly unpleasant or threatening encounters with the office manager before November 25, 2014, and affirmatively testified that she had none after November 25, 2014. Audio at ~18:04, ~20:00. During the November 25, 2014 encounter, claimant very vocally objected to what she perceived was a coworker's unjustified absence; the office manager then attempted to explain the emergent circumstances that caused the absence and offered a resolution to claimant's complaints about the extra work necessitated by the absence. It does not appear that under these circumstances, a reasonable and prudent person of normal sensitivity would have considered a very brief touch to her shoulder to stop her abrupt withdrawal from the discussion such offensive behavior that it was a grave reason to quit work. As can best be determined from the record, claimant was very vigorously resisting the office manager's attempt to reason with her and assuage her distress. In such an emotional context, reasonable people allow certain latitude before concluding that a brief touch intended to capture their attention is intolerable. Here, claimant did not contend that she had any conditions that made her peculiarly sensitive to perceived offensive or threatening behaviors. Under the circumstances as claimant described them, and with no history of similar encounters with the office manager, a reasonable and prudent person would have thought that if the office manager's behavior was, at worst, an aberrational event. A reasonable and prudent person would not have objectively concluded that, based a single atypical incident, the office manager's alleged behavior was a sufficiently compelling reason to leave work.

As well, even if claimant subjectively believed that, based on only one episode, the office manager's behavior was beyond all tolerable bounds, she still did not have grounds for objectively concluding that she needed to leave work when she did. Absent a history of prior offensive behavior from the office manager, to which claimant did not allude, a reasonable and prudent person would not have left work before attempting to raise her objections to the office manager and determining that the office manager was not going to stop engaging in such behaviors. In addition, although one of the reasons that claimant contended that she left work was because she did not think that the physician had discussed the November 25, 2014 incident with the office manager, it appears that he had done so and had concluded that claimant had overreacted to the incident. Audio at ~17:42, ~24:42, ~37:50. A reasonable and prudent person would not have assumed that the physician had not addressed the matter with the office manager, and would not have decided to leave work before clearly informing the physician that she was going to do so and disputing the account of the incident that the office manager had provided to the physician.

Claimant did not establish that grave reasons motivated her to leave work when she did. Claimant also did not show that she took reasonable steps to avoid leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-33833 is affirmed.

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

DATE of Service: April 20, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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