

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0262**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause but was eligible to receive benefits from the date of the work separation until December 20, 2014 (decision # 165531). Claimant filed a timely request for hearing. On February 17, 2015, ALJ Clink conducted a hearing, and on February 19, 2015 issued Hearing Decision 15-UI-33754, affirming the Department's decision. On March 9, 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) Jacksonville Denture Clinic, Inc. employed claimant as a laboratory technician from October 1, 2014 until December 9, 2014.

(2) When the employer's owner hired claimant, the owner thought that claimant was experienced in fabricating dentures and would be able to perform his work within a forty hour work week as the employee he replaced had done.

(3) After claimant was hired, he could not perform the work the employer assigned to him without incurring a significant amount of overtime. The employer's owner thought that the number of dentures claimant was assigned to fabricate was no greater than the number that had been fabricated by the employee whom claimant had replaced during a regular work week. On average, claimant worked between sixty and seventy hours per week, but a backlog of denture orders accumulated. The employer paid claimant for all regular and overtime hours that he reported. The employer's owner thought that claimant was unable to keep pace with his workload because he was abnormally slow in making dentures and was not as skilled or experienced as he had represented. The owner never told claimant that his job was in jeopardy unless he was able to work more efficiently and quickly.

(4) Sometime before December 9, 2014, claimant told the employer's owner that he could not handle his workload in a timely fashion. To alleviate claimant's workload, the employer's owner started outsourcing some of claimant's work to other dental laboratories. The owner also hired a temporary employee to work one day each week assisting claimant in completing the dentures assigned to him.

(5) After approximately two months of work, by early December 2014, claimant still felt "overwhelmed" and "stressed out" by the volume of work. Audio at ~ 13:43. Around that time, claimant told the owner that his feelings of overwork had not abated. The owner told claimant "we'll make [some more] changes" to reduce claimant's work hours and workload. Audio at ~25:16, ~ 27:10.

(6) On December 9, 2014, claimant gave the employer's owner a letter stating that he was going to quit in two weeks, on December 23, 2014. The owner perceived that claimant made several unfair statements in his letter of resignation and displayed a poor attitude about working for the employer. The owner was concerned that claimant would disrupt the workplace if he was permitted to work during the period between when he gave his notice of quitting and his planned leaving date. On December 9, 2014, the employer discharged claimant after he submitted his letter of resignation.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause on December 23, 2014. Claimant is eligible to receive benefits from the December 9, 2014 date of his discharge through the week ending December 20, 2014.

The employer discharged claimant on December 9, 2014, after claimant submitted a letter in which he stated that he was quitting and his last day would be December 23, 2014. ORS 657.176(8) states that, when an individual has notified his employer that he will leave work on a specific date and the employer discharged the individual, not for misconduct, no more than 15 days before the planned leaving date, the work separation is adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred, except that the individual is eligible to receive benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. The employer discharged claimant 14 days before his planned leaving date. The reason that the employer discharged claimant, to avoid discord in the workplace if he was allowed to work after he gave his notice, did not result from any willful or wantonly negligent violations of the employer's standards and did not constitute misconduct. Audio at ~22:06, ~22:30. Because it meets all of the requisites of ORS 657.176(8), the employer's intervening discharge of claimant must be disregarded and his work separation must be evaluated as a voluntary leaving. The single issue for purposes of determining whether claimant is disqualified from benefits is whether or not claimant had good cause for leaving work when he did.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he 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 his employer for an additional period of time.

Although claimant first contended that he quit work because of what he perceived to be the excessive hours that he was working, he also provided an extensive list of miscellaneous complaints against the employer. Audio at ~13:36, ~16:20. It does not appear that any of the miscellaneous complaints actually motivated claimant's decision to leave work, and it appears that claimant raised those complaints only to support his view that the employer's owner might have been unreasonable in some of his actions. Based on the weight of the evidence in the record, the proximate cause of claimant's leaving work was his perceived excessive workload and the stress he experienced from not keeping pace with the number of dentures ordered from the employer's laboratory.

With respect to claimant's workload, claimant did not appear to dispute that the previous laboratory technician had been able to handle the workload that claimant was handling in a forty hour work week, and that part of his difficulties were due to his lack of skills. Claimant also did not dispute that, when the owner became aware that claimant could not keep up with his work, the owner began outsourcing denture orders to other laboratories and hired a part time worker to assist claimant. Audio at ~25:09. Claimant did not dispute the owner's testimony that, at the time claimant decided to quit, he and the owner were in the process of making additional plans that would alleviate claimant's workload, reduce his hours and, presumably, diminish the stress that he was experiencing. Audio at ~25:09, ~27:10. On this record, a reasonable and prudent person would not have decided that his only alternative was to quit work when he did, particularly when the owner had already taken some steps to ease his workload and was in the process of discussing with him more specific steps that could be taken to further reduce it. The evidence in the record also does not show that the owner was unsympathetic to claimant's circumstances or that he was likely unwilling to make other arrangements to reduce claimant's workload as he had promised.

Claimant did not meet his burden to show that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-33754 is affirmed.

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

**DATE of Service:** April 28, 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](http://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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