

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0321

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74557). Claimant filed a timely request for hearing. On March 10, 2015, ALJ S. Lee conducted a hearing, and on March 13, 2015 issued Hearing Decision 15-UI-35133, affirming the Department's decision. On March 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Both claimant and the employer submitted submitted written arguments. Claimant did not certify that she provided a copy of her written argument to the employer as required by OAR 471-041-0080(2)(a) (October 29, 2006). Both arguments contained detailed recitations of new information, but neither party explained why that party did not offer this information at the hearing or otherwise show that factors or circumstances beyond the party's reasonable control prevented the party from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For these reasons, EAB did not consider either party's written argument when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Oregon Imaging Center employed claimant as a marketing person and a physician liaison from October 28, 2014 until January 8, 2015.

(2) When the employer hired claimant, she understood that her position would not involve a substantial number of marketing duties. However, after the employer's business development director left employment, claimant assumed many marketing duties. The employer promised claimant that it would provide an intern to assist her in performing marketing duties. While the employer retained the services of an intern to help claimant, the employer was "very strict" on the number of hours it allowed the intern to work. Transcript at 13.

(3) In her role as physician liaison, claimant thought that she was expected to resolve complaints that physicians' offices had about the employer's services. Claimant thought it was appropriate for her to address such complaints directly with the staff who had dealt with the particular physician's office. Beginning sometime before the fall 2014, claimant received several complaints from physicians' offices about long hold times when they tried to schedule patients for the employer's services, the failure of the schedulers to answer their phones and the "scolding" behavior of the scheduling supervisor. Transcript at 10. Claimant tried to resolve these complaints by speaking directly to the schedulers and the scheduling supervisor. The supervisor and some of the schedulers disliked claimant doing so and thought that claimant was "disruptive" to the operations of their department. Transcript at 23.

(4) During summer 2014, claimant thought that her job duties were excessive, and that the work-related stress she was experiencing needed to be reduced. Claimant sought assistance from the employer's human resources department to reduce her work hours. A human resources representative consulted on claimant's behalf with the employer's management. On July 27, 2014, claimant's hours of work per week were reduced from forty to thirty-two. On some occasions afterward, claimant worked more than thirty-two hours in a week.

(5) Sometime before fall 2014, claimant started to experience hair loss and what she perceived was a tremor in her left hand. Claimant attributed these symptoms to stress in the workplace.

(6) In approximately fall 2014, claimant told her manager that she was continuing to receive complaints from physicians' offices about the schedulers, and the scheduling supervisor in particular. After claimant spoke with her manager, the complaints about the schedulers continued. Claimant thought that her manager was not appropriately dealing with the scheduling supervisor and that her manager was making her "look bad" to the complaining physicians' offices. Transcript at 7. Sometime after, still in fall 2014, claimant sent an email to her manager, which she copied to the employer's practice administrator, stating that physicians' offices were continuing to complain about staff in the scheduling department and giving her opinion that the scheduling supervisor should not be allowed to remain in that position. Transcript at 10. When claimant perceived that nothing was done after she sent the email, claimant met with the practice administrator, telling him she was dissatisfied with her manager's responses to her complaints about the schedulers and the scheduling supervisor and that she believed that the employer was losing business as a result of the schedulers' behavior and the scheduling department supervisor. Transcript at 7. The practice administrator spoke to claimant's manager about claimant's complaints, but claimant did not perceive any change in the way in which her manager handled the scheduling supervisor.

(7) In fall 2014, shortly after claimant met with the practice administrator about her manager and the scheduling supervisor, claimant's manager spoke with her. The manager told claimant that the scheduling supervisor's work performance was better than claimant thought and that she needed to stop making so many complaints about it. The manager also told claimant to contact him, and not the practice administrator or the scheduling supervisor, if she had any problems or complaints. Claimant thought that her manager was not "supporting" her. Transcript at 11. Sometime in late fall 2014, the employer formally disciplined the scheduling supervisor for the manner in which she dealt with physicians' offices. Transcript at 24, 25, 40.

(8) On December 3, 2014, claimant's manager met with her in a coaching session. The manager again told claimant that she should raise any complaints or problems she had with him, and not directly with the scheduling supervisor or the practice administrator. The manager also told claimant that some schedulers thought that claimant's behavior with them was disrespectful. The manager's statements upset claimant and she left the coaching session before it was over. Claimant went home early from work after telling her manager she needed to leave. Claimant did not report to work on December 4, 2014, but took a personal day off. On December 4, 2014, the human resources director met with claimant after the workday was over. Claimant expressed at length her frustrations with the scheduling supervisor and her own manager. The human resources director asked claimant to come into work the next day to meet with the director, claimant's manager and the practice administrator to address her concerns.

(9) On December 9, 2014, claimant reported for work and met with the human resources director, the practice administrator and her manager. Claimant stated that she did not think her manager or the practice administrator were listening to her complaints and taking effective action. The managers told claimant that they did not want to revisit her past complaints, but wanted to determine how best to move forward.

(10) Sometime in early or mid-December 2014, claimant spoke with the scheduling supervisor. They discussed how they were going to try to work better together. Transcript at 34. At that time, claimant thought that "things were getting better" between her and the scheduling supervisor. Transcript at 7. Afterward, claimant told the human resources director that "things were good" between them. Transcript at 17.

(11) Sometime in December 2014, claimant's had an appointment with a neurologist about the tremor in her left hand. The neurologist told claimant that her symptoms might be attributable to stress in the workplace. Around this time, claimant was still experiencing the hair loss that she also thought was a result of work-place stress.

(12) On January 6, 2015, the employer received a complaint from an employee alleging that claimant and another employee had engaged in harassing or bullying behavior in the workplace. Transcript at 29, 39. On January 7, 2015, the employer interviewed several employees mentioned in the complaint to learn what they knew about the alleged harassment. On January 8, 2015, claimant was asked to attend a meeting with the human resources director, her manager and the employer's compliance officer. Claimant was told that an allegation of harassment had been made against her, that the employer representatives wanted to interview claimant about the allegations and that the employer customarily investigated all complaints alleging violations of its standards of conduct. The employer's representatives did not tell claimant the identity of the employee who had made the complaint or the specific incidents that were cited in the complaint. Based on the questions claimant was asked, claimant concluded that the scheduling supervisor was the complaining employee. At the meeting, the employee representatives told claimant that they were engaged in fact finding only, and none of them mentioned or suggested that the employer intended to discharge claimant in response to the complaint or that claimant's discharge was a possibility. Transcript at 15. In fact, the employer did not intend to discharge claimant as a result of the complaint or for any other reason. Transcript at 30, 40.

(13) After the meeting on January 8, 2015, claimant concluded that she was going to be discharged as a result of the harassment complaint. Claimant also concluded that her manager was not supporting her as she wanted to be supported, and the employer's management was listening to her manager and not to her when it considered her complaints. Claimant sent an email to her manager stating that she was leaving for the day early because she was not able to work productively. Shortly afterward in mid-afternoon, claimant went home.

(14) In the later in the afternoon on January 8, 2014, claimant sent an email to the employer stating that she was resigning effective immediately. Before she sent her resignation, claimant did not discuss with any employer representatives whether the employer intended to discharge her because of the harassment complaint, or raise again her complaints about not receiving sufficient support from management. Claimant voluntarily left work on January 8, 2015 and did not return.

(15) Sometime after claimant left work, the employer finished its investigation of the harassment complaint and it concluded that the complaint was unfounded. Transcript at 29.

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.

While claimant stated that she experienced the symptoms of hair loss and a hand tremor due to the workplace stress that she experienced, she did not describe those symptoms in a manner that suggested they were likely caused by a permanent or long term physical or mental impairment within the meaning of 29 CFR §1630.2(h). Nor did claimant provide any medical diagnosis from a healthcare professional or otherwise that supported the existence of a permanent or long-term impairment underlying these symptoms. Furthermore, when claimant described her reasons for leaving work it did not appear that the tremor or hair loss was a significant factor in her decision to quit. *See* Transcript at 43. Although the standard for showing good cause for leaving work is modified when a claimant shows that he or she had a permanent or long-term physical or mental impairment, there is insufficient evidence in the record to establish that claimant may take advantage of this modified standard.

Claimant presented a long list of grievances against the employer, which may be summarized generally as dissatisfaction with the scheduling supervisor; dissatisfaction with the response of her manager to her complaints about the scheduling supervisor; dissatisfaction about the responses of the practice administrator and the human resources director to her complaints about her manager's inadequate responses; and her belief that she was going to be discharged after the fact-finding interview on the harassment complaint. We will consider each of these reasons in turn.

It appears that as of early December 2014, claimant thought that she and the scheduling supervisor were working together better. Transcript at 7, 17, 34. Claimant cited no further unpleasant incidents with the scheduling supervisor between their early December 2014 conciliatory conversation and the January 8, 2015 date on which she decided to resign. Although claimant might have had historic problems with the scheduling supervisor, claimant did not establish that, as of the date she left work, the problems with the scheduling supervisor were ongoing or constituted a grave reason to leave work when she did.

With respect to claimant's dissatisfactions with the manner in which her manager dealt with the scheduling supervisor and the manner in which the practice administrator and the human resources director dealt with her manager's lack of responsiveness, claimant did not dispute that the scheduling supervisor was formally disciplined in late fall 2014 for issues with her performance, including presumably the types of behaviors that led to complaints from physicians' offices. While it is not clear from the record exactly how this discipline came about, it is inferable that claimant's manager or the practice administrator or the human resources director was involved in the decision to sanction the scheduling manager based in whole or in part on claimant's complaints. Although claimant might have thought that the employer did not act as promptly or as harshly as she would have liked to address her principal complaints with the scheduling supervisor, it ultimately did so and significantly in advance of claimant's January 8, 2015 decision to leave work. In addition, as of the date that claimant decided to quit, it appeared that claimant and the scheduling supervisor, as discussed above, were in the process of resolving their differences. As of the date claimant resigned from work, the basis for her complaints against her manager, the practice administrator and the human resources director, that they had failed to take action against the scheduling supervisor, no longer existed. Claimant did not meet her burden to show that ongoing inactivity on the part of these employer representatives remained a grave reason for her to leave work.

With respect to the fact-finding interview on January 8, 2015, claimant conceded that no employer representatives alluded to discharging or possibly discharging her as a consequence of the harassment complaint. Transcript at 15. Although claimant contended that, after the fact-finding interview but before she resigned, the employer's intention to imminently discharge her was apparent from the fact that she could not access her work email account and that many of her emails addressing her complaints against the employer were missing from her archived emails, the employer's witness vigorously disputed these claims. Transcript at 11, 12, 14, 15, 30. That witness testified that the employer did not deny claimant access to her work-related email account until after it had received her email of resignation and that the witness had looked at claimant's archived emails, after she had resigned, and none appeared to be missing. Transcript at 30, 31, 32, 35, 36. Neither party presented documentary evidence of whether or not claimant sent her email resignation from her personal email account (corroborating that claimant was denied access to her work email) or, as the employer, contended from her work email account (which would corroborate that claimant was not denied access to that account before she resigned) and we are left with only the testimony of both parties. There is no reason in this record to doubt the credibility of either party or to prefer the testimony of either over the other. Where the evidence is evenly balanced on a disputed issue, the uncertainty in a case involving a voluntary leaving must be resolved against claimant, since she was the party that carried the burden of persuasion. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). More likely than not, the employer did not lock claimant out of her work email account or delete some of her archived emails before she resigned. Accordingly, there was no objective evidence supporting claimant's subjective belief that the employer intended to imminently discharge her after the January 8, 2015 fact-finding interview. Absent

more than a subjective belief that she was going to be discharged, a reasonable and prudent person in claimant's circumstances would not have reasonably concluded that her discharge was likely before, at a minimum, asking an employer to clarify its intention and confirming that it was going to discharge her in response to the harassment complaint.

Claimant also appeared to contend that she left work because the employer held a formal fact-finding interview to investigate the bases, if any, for the harassment complaint rather than having an informal meeting with claimant. Transcript at 42, 43. From the record, it appears that claimant was offended that the employer did not immediately conclude that the complaint was unfounded without any inquiry. That the employer took seriously a harassment complaint that had been filed would not, in and of itself, have caused a reasonable person who was the object of the complaint to conclude that the employer's actions in investigating was a grave reason to leave work. Transcript at 42, 43. A reasonable and prudent person would have understood the employer's need to conduct an investigation after a formal complaint had been filed. A reasonable and prudent person who thought she had not engaged in any harassing behavior would have participated in the employer's fact-finding with a view to exonerating herself of the allegations rather than concluding that the mere fact of an investigation was a grave reason to leave work.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-35133 is affirmed.

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

DATE of Service: May 11, 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.

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.