

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0602

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 162941). The employer filed a timely request for hearing. On May 4, 2015, ALJ Shoemake conducted a hearing, and on May 12, 2015 issued Hearing Decision 15-UI-38286, concluding claimant voluntarily left work with good cause. On May 22, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Millard Dental LLC employed claimant from February 19, 2015 to February 23, 2015 to complete a paid working interview for a front office position.

(2) In February 2015, claimant had a wound on her tailbone area from a surgical procedure in January 2015. Claimant's doctor had released her to work, and claimant did her best to bandage the area while it healed. Although the wound was bandaged, on February 23, 2015, the wound seeped through claimant's clothing. Patients and other employees mentioned having seen a spot on claimant's clothing to one of the owners. The owner met privately with claimant and told her she had a noticeable spot on her pants. Claimant explained that it was a healing surgical wound.

(3) Claimant returned to the front desk and sat in a fabric chair she used while performing her duties on a computer. Claimant did not know it was the owner's chair, or that the owner had provided a non-fabric chair for claimant to use. Later that day, the owner asked claimant to refrain from sitting in the owner's chair because claimant's wound was "gross," and she did not want to sit in the chair after claimant sat there. Audio Record at 15:47 to 16:15.

(4) Claimant took a lunch break, and when she returned, told her lead, who she understood to be the office manager, that the owner made her feel uncomfortable when she told her not to sit in the owner's chair. The lead told claimant she could do nothing about the owner's conduct, because she did not hear her make the statements. The owner met with claimant and told her she felt uncomfortable with claimant's seeping wound and claimant sitting in her chair. The owner told claimant it was

unacceptable to go to work with “that kind of open wound” and that claimant had been inconsiderate to sit down somewhere without regard to the seepage on her clothing. Audio Record at 9:42 to 10:03. Claimant told the owner she was offended by her statements and no longer “felt comfortable” in the employer’s work environment and was not willing to continue working for the employer. Audio Record at 6:09 to 6:27. Claimant did not complain to the owner’s co-owner and husband, the dentist.

(5) The employer would have allowed claimant to continue working if she had not left work on February 23, 2015.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work with good cause.

Work Separation. The Department having found that the employer discharged claimant, the first issue in this case is the nature of the work separation. We agree with the ALJ that claimant voluntarily left work. 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) (August 3, 2011). 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. OAR 471-030-0038(2)(b).

It is undisputed that the employer would have allowed claimant to continue working after February 23, 2015, and that claimant initiated the work separation because she was offended by the owner’s statements about claimant’s wound. The record therefore shows that claimant could have continued to work for the employer after February 23, but was unwilling to do so. The work separation was a voluntary leaving.

Voluntary Quit. 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.

The owner’s statements that claimant’s wound was “gross,” that she did not want to sit on a chair after claimant sat on it, and that claimant was inconsiderate and should not have gone to work with her wound, were, at least, inappropriate and demeaning. Claimant’s complaints to her lead and the owner who made the statements to her did not improve the situation. The owner merely reiterated her discomfort with claimant’s medical condition. Having already complained to her lead and one of the owners, and considering that claimant was still engaged in a working interview, claimant had no reasonable alternative but to quit to avoid the employer’s mistreatment regarding her medical condition. The record shows claimant could not continue to work for the employer without continuing to face the owner’s attitude toward her condition. The Court of Appeals has stated that claimants are not required to “sacrifice all other than economic objectives and * * * endure * * * personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits.”

McPherson v. Employment Division, 285 Or 541, 557 (1979). Applying *McPherson's* “oppressive situation” standard to the facts of this case, we conclude claimant had good cause to quit work, because her situation was “oppressive” and she had done what she could to correct it before deciding to abandon her job.

Claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-38286 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. H. Hettle, *pro tempore*, not participating.

DATE of Service: July 7, 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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