

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0798

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152756). Claimant filed a timely request for hearing. On June 19, 2015, ALJ R. Davis conducted a hearing, and on June 25, 2015, issued Hearing Decision 15-UI-40666, affirming the Department's decision. On July 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Aurora Wellness Center, the medical office of a single chiropractic physician, employed claimant as the receptionist from September 2, 2014 to February 13, 2015.

(2) During the week of February 13, 2015, claimant perceived tension in the office between her and her employer over her work performance and believed the employer was not treating or communicating with her very well. She also perceived that the employer's patients were giving her the "cold shoulder" and that "something" was going on. Transcript at 5-7.

(3) On February 13, 2015, while at work, claimant became upset when she saw the employer and her assistant exchange "weird looks" that she concluded were about her. During her lunch break, she met with her husband, was obviously upset, and discussed with him her perceptions and what she considered the employer's poor treatment of her. Shortly thereafter, her husband contacted the employer's office, notified the employer's assistant that claimant "would not be coming back to work again at [the] office" and requested that her "last check" be prepared that afternoon for him to pick up. Transcript at 16, 29. The assistant notified the employer who contacted claimant's husband. He told the employer claimant was upset with the employer's treatment of her at work and did not want to speak with her. The employer suggested that she and claimant meet the next day.

(4) On February 14, 2015, the employer sent claimant a text message that her final checks were ready and requested feedback about improving the office atmosphere. They met that afternoon, claimant returned her office keys and did not assert she had not quit. When the employer asked her why she quit, she responded that she had “wanted more specific feedback about what she was doing wrong.” Transcript at 18. The employer stated, “Well, maybe it just wasn’t a good fit from the beginning.” *Id.*

(5) Continuing work was available to claimant on and after February 14, 2015.

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

The parties disagreed regarding the nature of the work separation, with claimant asserting she was “fired” on February 14, 2015 because she “was not a good fit.” Transcript at 4-5. 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; 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, the separation is a discharge. OAR 471-030-0038(2) (August 3, 2011).

There was no dispute that claimant did not assert she had not quit when told her final checks were ready or when she met with the employer, and that on February 14 she explained to the employer why she had quit. Moreover, claimant’s husband did not dispute that on February 13 he told the assistant he would be in that afternoon to pick up his wife’s final check. Transcript at 33. On this record, claimant could have continued to work for the employer for an additional period of time but chose to not do so. Accordingly, under OAR 471-030-0038(2), the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). 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 would have continued to work for the employer for an additional period of time.

Claimant left work because she was uncomfortable with the tension in the office, believed she was getting the “cold shoulder” from the employer, assistant and patients, and “wanted more specific feedback about what she was doing wrong.” Although claimant may have been upset with her working conditions, she failed to show that her concerns constituted reasons of such gravity that a reasonable and prudent medical office receptionist of normal sensitivity, exercising ordinary common sense in her circumstances, would conclude she had no reasonable alternative but to abruptly leave her position without voicing her concerns to the employer and become unemployed.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-40666 is affirmed.

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

DATE of Service: August 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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