

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1056

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 151409). Claimant filed a timely request for hearing. On August 14, 2015, ALJ Murdock conducted a hearing, and on August 19, 2015, issued Hearing Decision 15-UI-43191, affirming the Department's decision. On September 1, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Women's Healthcare Associates employed claimant as a medical assistant from January 9, 2012 until June 19, 2015.

(2) At the end of October 2014, claimant transferred from the employer's Peterkort office in southwest Portland to its Newberg, Oregon facility. The Newberg facility was closer to claimant's home.

(3) At the Newberg facility, claimant found high employee turnover and poor morale; she also concluded that management treated employees unfairly. Claimant also believed that she and her coworkers had an excessively heavy workload because management failed to provide adequate staff for the facility. Claimant wanted to improve working conditions for herself and her coworkers, and after talking with her coworkers, contacted the employer's human resources director (HR director) in April 2015. Claimant told the HR director about the problems she and her coworkers were experiencing at the Newberg facility; the HR director told claimant that she appreciated the call, and asked claimant if she could share her concerns with management. Claimant said that she needed to think about the HR director's request. She subsequently gave the HR director permission to talk to management about problems in the Newberg facility. Audio recording at 8:52.

(4) A few days after claimant's conversation with HR director, the manager of the clinic where claimant worked directed claimant to meet with her and the HR director. At this meeting, which lasted about an hour, the clinic supervisor made many critical comments about claimant. She told claimant that patients and coworkers repeatedly complained about claimant, that claimant was "always negative," and that it

had not been a good idea to bring claimant to the Newberg facility. Audio at 29:48. Although claimant maintained her composure during the meeting, she was deeply upset by the clinic supervisor's criticisms and was "hysterical" and crying after the meeting. Audio recording at 26:53. She asked and was granted permission to leave work 45 minutes early. Audio recording at 10:27. After claimant went home, the HR director contacted claimant; she expressed concern about claimant's wellbeing, assured claimant that the clinic manager's criticisms were not valid, and told claimant that "if you need help out of this situation I want to help you." Audio recording at 11:06. Claimant also contacted her coworkers, who told her they had never complained to managers about her, and her former supervisor, who told claimant that no patients had ever complained about her when she worked in the Peterkort office. Audio recording at 30:38 and 31:22.

(5) When claimant returned to work after the meeting with the clinic supervisor and HR director, the clinic manager met with claimant and told her that they would have to "figure some things out." Audio recording at 12:17. The clinic manager then spoke individually with all the other workers in the Newberg facility. After these meetings, claimant believed that interactions with and among her coworkers were changed. Before the meetings, claimant and her coworkers spoke freely and casually with one another about personal and family matters. After the meeting, the medical providers with whom claimant worked limited their conversations with claimant to matters directly related to patient care. Audio recording at 26:17. Claimant believed that her supervisor had issued a "gag order" and that she and her coworkers could no longer talk freely with one another because management considered any such discussions to be "gossip." Audio recording at 24:50. Claimant also believed that management discriminated against her because other employees received permission to work overtime, while she was not allowed to do so. Audio recording at 25:18. Claimant discussed these problems with the HR director, who regularly checked on claimant. Audio recording at 38:29.

(6) During the last week of May 2015, claimant had surgery for carpal tunnel syndrome. After the surgery, she was on medical leave until June 15, 2015 when she returned to work. On June 15, 2015, claimant's supervisor gave claimant a written reprimand for making a minor mistake in filling out a laboratory form. Audio recording at 12:58 and 21:29.

(7) Sometime during the week of June 15 through 19, 2015, claimant learned that her son had been injured and taken to the emergency room. Claimant's supervisor gave her permission to leave work to attend to her son, but told her she should contact the human resources department and ask for leave. Claimant was upset by the supervisor's directive because she believed it was unnecessary for her to request leave. Claimant contacted the human resources department and was told that she did not need to request leave. Audio recording at 13:59 to 15:06.

(8) Also during the week of June 15 through 19, 2015, claimant made a mistake in drawing blood from a patient. Claimant became concerned that the problems she was experiencing at work had impaired her ability to care for patients. Claimant contacted the HR director and they decided that claimant would quit her job on June 19, 2015. Claimant quit her job because she believed her work environment was hostile, and that she was being harassed by her supervisors who treated her unfairly.

(9) At the time claimant quit her job, the only available opening for which she was qualified was in the employer's Lloyd Center facility, located in northeast Portland. Claimant was not interested in this

position because it would have involved a lengthy commute from her home in Sherwood. Audio recording at 17:07.

(10) Claimant has suffered from anxiety for the past 14 years. She controls her anxiety with a low dose medication and also sees a counselor on a fairly regular basis. Audio recording at 17:30. When claimant began working in the employer's Newberg facility, she began to experience physical symptoms which her doctor diagnosed as panic attacks. Claimant had three or four panic attacks when she worked in Newberg. After she began having panic attacks, claimant saw her counselor more often. The counselor told claimant that "you need to not have your job." Audio recording at 21:05.

CONCLUSION AND REASONS: We agree with the ALJ and the Department. We conclude that 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 was diagnosed with anxiety, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant voluntarily work because she believed her work environment was hostile due to harassment and unfair treatment by her supervisors. A manager's behavior toward an employee may be good cause to leave work if a claimant shows she was subjected to ongoing "oppression" or "abuse" in the workplace. *See, e.g., McPherson v. Employment Division*, 285 OR 541, 557, 591 P2d 1381 (1979) (claimant are not required to "sacrifice all other than economic objectives and *** endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits.") Claimant cited a number of incidents to support her claim that her supervisors harassed her and treated her unfairly. We consider each of these in turn.

To the extent that claimant quit her job because of the events of the last week of her employment, she failed to show that these events constituted a grave situation. With regard to the June 15, 2015 written reprimand she received for a minor error made in filling out a laboratory report, claimant did not show that this reprimand jeopardized her employment status or had any other negative effect on her work situation.¹ Concerning her supervisor's directive that she request leave to attend to her injured son, it is unclear why claimant found this upsetting. The supervisor may have been mistaken regarding the employer's policy or procedure in such a situation, but the directive appears to be reasonable,

¹ Claimant testified that she had received one other written reprimand when she worked at the employer's Peterkort location, and that the employer's policy was to discharge an employee after three written reprimands. Audio recording at 46:41 and 47:31.

particularly since the nature and extent of the child's injury was unknown and the amount of time claimant would need to be off work was therefore uncertain. In regard to claimant's error in drawing blood from a patient, claimant did not demonstrate this was a particularly serious situation; the record contains no evidence that the patient complained, or that a supervisor or a coworker noticed the error and criticized claimant for it.

To the extent that claimant quit her job because of her supervisors' behavior, claimant failed to demonstrate that she faced a situation of ongoing oppressive or abusive conduct so grave that she had no alternative but to leave work when she did. The harassment of which claimant complained consisted of the clinic manager's behavior at an April 2015 meeting, the clinic manager's apparent issuance of a "gag order" that forbid employees from talking freely at work, and supervisors' unfair apportionment of overtime hours. It is understandable that claimant was upset by the clinic manager's harsh criticisms at their April meeting. The record does not show, however, that the manager raised her voice, used foul language, or threatened claimant with discipline or dismissal. In addition, claimant had the reasonable option of taking up the clinic manager's comment to "figure some things out" and working with the HR director, who was very supportive of claimant, to utilize some of the HR director's management tools in an attempt to resolve problems in the Newberg facility. A reasonable and prudent person would have pursued these alternatives before deciding to leave work. In regard to claimant's assertion that the clinic manager imposed a "gag order" on her and her coworkers, such a directive would undoubtedly create an uncomfortable and unpleasant situation in the workplace. Claimant failed to demonstrate, however, that a workplace in which she and her coworkers were unable to talk freely about personal subjects was an environment so oppressive that no reasonable or prudent person would have continued working for the employer. Concerning authorization to work overtime, claimant presented no evidence of any occasion on which she asked for and was denied permission to work overtime.

To the extent claimant left work because the stress she was experiencing on the job may have adversely affected her health, claimant failed to show that any such effects were grave. Although her work at the Newberg facility apparently exacerbated the anxiety from which claimant suffered by causing her to experience three or four panic attacks, the record shows that claimant successfully managed these attacks with appropriate medication and counseling. We also note that claimant's counselor never recommended that claimant quit her job. Although the counselor told claimant that "you need to not have your job," a suggestion claimant found obviously impractical, she and the counselor were able to resolve this issue. Audio recording at 21:05.

In sum, claimant failed to show that on June 19, 2015, she faced a situation so grave that no reasonable and prudent person suffering from anxiety would have continued to work for the employer. Claimant therefore did not demonstrate good cause for leaving work and is disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 15-UI-43191 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: September 29, 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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