

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1342**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 6, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 102305). Claimant filed a timely request for hearing. On October 26, 2015, ALJ Micheletti conducted a hearing, and on October 28, 2015 issued Hearing Decision 15-UI-46724, affirming the Department's decision. On November 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision, to the extent the argument was based on the hearing record.

**FINDINGS OF FACT:** (1) Indian Health Services employed claimant as a dental assistant from January 27, 2002 to June 30, 2015.

(2) Claimant has high blood pressure, diabetes and a history of cancer. Claimant receives medical treatment for her blood pressure.

(3) In April or May 2015, one of the dentists with whom claimant worked questioned claimant about her professionalism in front of another employee. Claimant replied to the dentist that he was unprofessional for failing to speak with her in a private setting. During the exchange claimant felt threatened because the dentist had approached her in an angry manner with a red face.

(4) Claimant felt extremely upset because of the incident. She began to feel unwell, and the next two days went to a clinic to get her blood pressure checked before work. Her blood pressure was extremely elevated, which claimant attributed to stress resulting from her interaction with the dentist. Claimant told her physician that her hostile work environment was affecting her health. Claimant's physician and claimant met with the employer's CEO, and the physician told the CEO that the hostility needed to stop.

(5) The CEO listened to claimant's physician's complaint and said they could "possibly look and see . . . if there is another job that we could put you in to get you away from the situation." Transcript at 15. Claimant agreed. She returned to her duties, but, thereafter, tried to stay away from the dentist involved in the previous incident. Approximately one week later, claimant checked with the CEO about her transfer, but the CEO replied, "really at this point in time there isn't any, [other position available for claimant]" and that her only choices were to go through mediation or leave her job. *Id.* The CEO explained that mediation might take several meetings, during which a mediator would try to resolve the conflict. Claimant had experience with mediation as a union shop steward, and did not think it would work because the previous mediations had not involved hostile work environment issues, and because the dentist did not believe there was a conflict. Claimant did not want to take a leave of absence because taking time off would not change the dentist's attitude toward her.

(6) On June 17, 2015, claimant was alone in a dental lab area. She had placed a box containing four 12x12 metal brackets on a counter. In claimant's presence, the dentist picked up the box and "hurled it against the floor," hitting the wall and some other boxes, where "the brackets kind of exploded within the box." Transcript at 19. Claimant "looked at [the dentist's] face and it was white with anger, like how dare you put this on my counter." *Id.* For approximately a minute, claimant stood there, shaking, then she picked up "the box that had insulted him and removed it so that it wouldn't make him mad any further." Transcript at 20. Claimant was crying and visibly upset, and a coworker sat claimant down and tried to calm her. Claimant stayed there, behind a closed door, for about an hour until her shift ended, then her coworker helped claimant pick up her purse and left with her. Claimant "just wanted to get away" and did not seek out her physician or the CEO. Transcript at 22.

(7) On June 19, 2015, claimant met with the CEO again before beginning work. Claimant had a migraine, and had been scheduled to work alone all day with the same dentist from the previous incidents. Halfway through the meeting claimant had to vomit because of the migraine and the stress and fear she felt about working with the dentist again. The CEO and another dentist told claimant they had come to the conclusion that the dentist about whom claimant had complained in April/May and June "had done nothing wrong," and that claimant had "misconstrued the action." Transcript at 26. Claimant decided at that point to quit work, effective June 30, 2015. Between June 19, 2015 and June 30, 2015, claimant worked one day, and used her accrued vacation leave the rest of the time.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude that claimant quit work with 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 P2d 722 (2010). Claimant had high blood pressure, diabetes, and a history of cancer, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with such impairments 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.

In Hearing Decision 15-UI-46724, the ALJ concluded that claimant quit work without good cause, reasoning that, although claimant quit work because of a grave situation caused by the dentist's "prior statements to claimant and his physically violent behavior in the clinic," she nevertheless quit work without good cause because she "could have pursued a grievance or mediation" as a reasonable alternative to quitting. Hearing Decision 15-UI-46724 at 2. We agree that the dentist's behavior toward claimant was physically violent, reasonably placed claimant in fear for her safety, and amounted to a grave situation for claimant. However, we disagree that a grievance or mediation were reasonable alternatives to quitting work.

Claimant feared for her safety in the presence of the dentist who had been violent toward her, experienced extremely high blood pressure, migraine and vomiting at the thought of continuing to work with the dentist. It would therefore be unreasonable to expect claimant to continue to work for the employer while waiting for her grievance to be processed. Nor was it reasonable for claimant to take time off work while the grievance was processed. Although she had some accrued leave, not only would taking time off work not change the dentist's behavior, given that the CEO and another dentist had concluded claimant's complaints were not substantiated, but there was no guarantee that the outcome of a grievance would be in her favor or change her working conditions. Claimant had experience with mediation and, as a result, had reason to believe mediation would not work for a claim of hostile work environment, particularly given her belief that the dentist did not think he had done anything wrong, and the belief of the CEO and another dentist that the dentist had done nothing wrong. Given those factors, claimant reasonably concluded that mediation would be a futile exercise.

In sum, the record shows that claimant quit work because of a reason of such gravity that left her no reasonable alternative but to voluntarily leave her job. She therefore quit work with good cause, and is not disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 15-UI-46724 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

**DATE of Service: December 16, 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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