

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0129

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95829). Claimant filed a timely request for hearing. On January 25, 2016, ALJ Murdock conducted a hearing, and on January 27, 2016 issued Hearing Decision 16-UI-51779, affirming the Department's decision. On February 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) J. H. Warmflash, DMD, doing business as Neighborhood Dentist, employed claimant as a dental assistant from September 1, 2015 until November 13, 2015. From July 7, 2015 until August 31, 2015, an employee staffing agency had previously assigned claimant to work as a dental assistant at the employer's dental office.

(2) During the early phase of claimant's employment, she sometimes complimented the dentist about the quality of his work in front of patients and the dentist would remark to the patients, "We're still in the honeymoon phase." Transcript at 12, 25. Claimant thought that comment was disrespectful and offensive. Once, the dentist noticed that an office chair was broken and he asked claimant how she thought that might have happened. Claimant was a large woman and interpreted the dentist's question as a negative comment about her weight and an accusation that she had broken the chair when she sat on it. Another time, the dentist noticed there was damage to a floor in the dental office and stated that it might have been caused by some chemicals claimant used when performing her work duties. Claimant interpreted the dentist's comment as criticism.

(3) Claimant thought that the dentist "micromanaged" her work. Transcript at 27. Claimant complained to the dentist that a headlamp he wore to illuminate areas he worked on in patients' mouths sometimes shined in her eyes and caused her to perceive spots in her visual field. The dentist told claimant he would try to avoid directing the headlamp in her eyes. Transcript at 9, 41. Claimant perceived the dentist as having a "negative mood" and thought he "disrespected" her. Transcript at 11. When claimant disclosed these impressions to the dentist, he told her she might not be "a good fit" for the

dental office. Transcript at 11. As time passed, claimant interpreted some statements by other staff members to mean that the dentist had Asperger's Syndrome, and claimant researched this condition to allow her to better relate to the dentist. Transcript at 11, 39. Claimant was offended when the dentist asked other staff members why claimant thought he had Asperger's Syndrome.

(4) Claimant also thought that the dentist tried to deter staff from taking personal time off. Claimant thought it was unfair that the dentist did not make group health insurance coverage available for staff members, or allow paid sick leave, until a staff member had been employed as a permanent employee for 90 days.

(4) Before October 22, 2015, claimant had told the dentist at least twice she was going to quit work if things did not change in the dental office. Transcript at 6. The dentist responded to claimant by stating, "We can work this out." Transcript at 6. On October 22, 2015, the dentist worked on a 17 or 18 year-old patient with claimant's assistance and observed that claimant was less than pleasant with that patient. In the evening, the dentist's daughter, who was a high school friend of the patient, received a text from the patient stating that claimant was a "grump" and "very unpleasant" to him. Transcript at 30.

(5) On Friday, October 23, 2015, the dentist called claimant into his office and told her that he had received a complaint about her from the high school patient she had assisted in treating the day before. The dentist told claimant, "That [sort of behavior] can never happen again." Transcript at 19. Claimant responded that the particular patient was a "prima donna" and the dentist should speak to another staff member who had observed her interaction with the patient to learn if the patient's complaint was justified. Transcript at 19. Claimant was upset, told the dentist he was taking the "patient's side," and that all of the other staff members "hated" the dentist. Transcript at 32, 33. The dentist told claimant, "What do you want me to do because I can't change anymore?" Transcript at 33. Claimant told the dentist she intended to quit work.

(6) On Monday, October 26, 2015, the dentist gave claimant a resignation notice that he had prepared to make her resignation "official." Transcript at 34. Claimant signed the resignation, effective November 13, 2015.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

At hearing, claimant contended that the employer discharged her, and the employer contended that claimant voluntarily left work. Transcript at 4, 7, 16, 34, 38. Accordingly, the first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. *Id.*

At hearing, the dentist asserted that claimant told him on October 23, 2015 that she was quitting work. Transcript at 32. Claimant asserted she only told the dentist she intended to quit if things did not change. Transcript at 5-6. However, it is undisputed that on October 26, 2015, the dentist gave claimant

a resignation notice that he had prepared, and that claimant signed the resignation. In signing the resignation notice on October 26, claimant agreed to sever the employment relationship, regardless of what she had told the dentist on October 23. Where, as here, an employer and employee mutually agree to sever the employment relationship, the work separation is properly characterized as a voluntarily leaving, and not a discharge. *Employment Department v. Shurin*, 154 Or App 352, 959 P2d 637 (1998). We therefore conclude that claimant quit work.

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 his employer for an additional period of time.

In her testimony at hearing, claimant listed many complaints about the dentist, but was not clear on why she decided to resign on October 23, 2015. Viewing this record in claimant’s favor, it does not appear that any of the complaints she had about the dentist’s behavior gave rise to an objectively grave reason or reasons to leave work. Claimant did not demonstrate that the dentist was abusive, created an objectively oppressive work environment for her, or did anything that a reasonable person would have considered grounds to quit work. See e.g., *McPherson v. Employment Division*, 285 Or 541, 557, 591 P2d 1381 (1979) (claimants 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 [by quitting] will disqualify the worker from unemployment benefits); *Appeals Board Decision*, 13-AB-0502, April 2, 2013 (ongoing unwanted sexual advances and touching despite making complaints); *Appeals Board Decision*, 12-AB-3213, January 8, 2013 (ongoing sexual harassment); *Appeals Board Decision*, 12-AB-3173, December 14, 2012 (ongoing verbal abuse despite complaints); *Appeals Board Decision*, 11-AB-3647, February 9, 2012 (sexist and ageist remarks); *Appeals Board Decision*, 11-AB-3308, December 22, 2011 (supervisor’s ongoing verbal abuse and fits of temper); *Appeals Board Decision*, 11-AB-2864, December 12, 2011 (management’s ongoing ageist comments and attitudes); *Appeals Board Decision*, 11-AB-3063, October 28, 2011 (corporate culture hostile to women); *Appeals Board Decision*, 11-AB-2272, September 6, 2011 (supervisor’s regular fits of temper and verbal abuse).

With respect to the dentist’s behavior on October 23, 2015, while claimant might have been displeased that the dentist wanted to discuss a patient’s complaint about her behavior the previous day, and might have thought the dentist was not listening to her explanation, having such a discussion in the context of providing professional health services is not uncommon. A reasonable and prudent employee would not have left work over that discussion, particularly when the dentist had not threatened to take any disciplinary measures against her.

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

DECISION: Hearing Decision 16-UI-51779 is affirmed.

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

DATE of Service: March 2, 2016

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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