

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0534

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132755). Claimant filed a timely request for hearing. On April 21, 2016, ALJ Frank conducted a hearing, and on April 29, 2016 issued Hearing Decision 16-UI-58517, affirming the Department's decision. On May 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Christine Liu, DMD, PC employed claimant from March 3, 2003 until February 2, 2016, last as a dental assistant and front desk receptionist.

(2) During her employment, claimant occasionally became upset or frustrated with the employer's dentist. Sometimes, claimant would leave work in the middle of her shift due to these emotional reactions. The dentist ignored this behavior and, before February 2, 2016, claimant always returned and resumed working after leaving in mid-shift.

(3) Sometime before February 2, 2016, claimant concluded that she and the dentist were having "a breakdown in communication and direction." Audio at ~10:32. Claimant was unhappy at work. Claimant thought the dentist was not giving her "positive reinforcement." Audio at ~27:00.

(4) On February 2, 2016, claimant was assisting the dentist in examining a patient. As the dentist left the examination room to treat a second patient, the dentist told claimant to take an x-ray of the patient's tooth number 19. Claimant did not hear the dentist's instruction to her. When claimant approached the patient, the patient told her the dentist wanted an x-ray of the side of his mouth that was opposite to tooth number 19. Claimant took the x-ray as the patient indicated. After the dentist viewed the x-ray, she took claimant to the back of the examination room so the patient would not hear their conversation. The dentist told claimant she had x-rayed the wrong tooth and the wrong area of the patient's mouth. Claimant told the dentist that she had not specified the correct tooth to x-ray and she had relied on what the patient had told her. The dentist then stated that if claimant did not know which tooth to x-ray, she

should have asked the dentist and not the patient to avoid this type of confusion. Claimant responded by quitting work.

CONCLUSIONS AND REASONS: 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.

The incident on February 2, 2016 that caused claimant to leave work was, at worst, a miscommunication between the dentist and claimant. As claimant described how the dentist addressed with her that the wrong area of the patient’s mouth had been x-rayed, the dentist merely pointed out the error and suggested how to avoid it or similar errors in the future. Nothing in claimant’s description of that conversation rises to the level of a grave reason to leave work. The conversation took place out of the hearing of the patient, claimant did not contend the dentist yelled at her, used foul language, harangued her, insulted her or was abusive in any way. On this record, that conversation was insufficient to constitute good cause for claimant to leave work.

Although claimant contended that “the particulars” of the February 2, 2016 incident between her and the dentist were not as important as the culmination of events that had been “building up for months” between them, the record is devoid of evidence that this accumulation subjected claimant to any cognizable harms. Audio at ~10:15. Rather, from what can be discerned from this record, it appears only that before February 2, 2016 there could have been some occasional miscommunications between claimant and the dentist, and the dentist might not have praised claimant to the degree she thought she deserved. In the context of a busy professional workplace and absent additional evidence, such matters would not cause a reasonable and prudent person to conclude she had no alternative other than to leave work.

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

DECISION: Hearing Decision 16-UI-58517 is affirmed.

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

DATE of Service: June 8, 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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