

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0672

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103553). Claimant filed a timely request for hearing. On May 17, 2016, ALJ Seideman conducted a hearing, and on May 18, 2016 issued Hearing Decision 16-UI-59804, reversing the Department's decision. On June 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but failed to certify that she provided a copy of the argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider claimant's argument and considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) University of Oregon employed claimant as a triage nurse in its health center from October 1, 2012 until January 11, 2016. To perform her work, claimant held a registered nurse (RN) license issued by the Oregon State Board of Nursing (OSBN).

(2) During fall 2015, claimant experienced problems with her right foot. Claimant sought medical treatment and her foot was placed in a cast for approximately three months. During the months of October and November 2015, claimant was tardy several times to work because of her injury and the cast. The employer ultimately approved a leave for claimant through the Family Medical Leave Act (FMLA) due to her injury.

(3) Sometime before December 7, 2015, the employer scheduled a disciplinary meeting with claimant to discuss her recent episodes of tardiness. The meeting was held on December 7, 2015 and claimant waived her right to union representation. Claimant agreed she had been tardy in reporting for work several times. At the conclusion of the meeting claimant understood she was to be fined for her past

tardiness, and the employer would contact her before January 4, 2016, the end of the employer's winter break, to inform her of the details of the fine. Approximately around this time, claimant also submitted a release from her physician allowing her to return to work with no restrictions effective December 16, 2015.

(4) On December 22, 2015, during the winter break, the employer sent an email addressed to claimant at her work email account informing her that it had scheduled a Weingarten investigatory meeting with her on January 7, 2016 and that she was being placed on administrative leave until that meeting was held. Exhibit 3 at 1. The email stated the employer had suspended the disciplinary process begun on December 7, 2015 because claimant had been on leave, and the employer was resuming the next step in the disciplinary process since claimant had been released to work without restrictions. The email also stated that, in addition to claimant's tardiness, the employer had identified "several patient safety concerns . . . that need to be addressed with you before your return to work." *Id.* The email advised claimant she had the right to have a union representative present with her at the meeting. *Id.* Claimant was offended that the employer sent the email addressed to her work email account during the winter break when it should not have expected she would not be monitoring correspondence delivered to that account. Claimant thought the employer was being "sneaky" with her. Audio at ~15:42.

(5) Sometime after December 22, 2015, claimant contacted a union representative to determine the nature of the employer's "patient safety concerns." The representative told claimant the employer believed that she had been practicing nursing "beyond the scope of [her nursing license]." Audio at ~20:48. The representative informed claimant the employer was focusing on a recent occurrence when a female student presented herself as a patient to claimant complaining of a breast lump. The employer believed claimant had provided a diagnosis or other information to the patient that appropriately was provided only by a licensed physician or some other type licensed medical practitioner. Claimant thought the employer was "coming after" her license as a registered nurse in Oregon. Audio at ~18:25.

(6) On January 7, 2016, claimant did not attend the meeting the employer had scheduled to discuss its concerns about the manner in which she provided care to patients. Claimant chose not to attend because she thought if she did not, the employer would have no reason contact the OSBN about its concerns that she was practicing in a manner that exceeded the authority allowed under her registered nurse license and her license would not be placed in jeopardy.

(7) On January 11, 2016, claimant notified the employer she was leaving work. Claimant decided to quit for the same reasons she did not attend the meeting on January 7, 2016.

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 his employer for an additional period of time.

Claimant contended that the reason she decided to leave work was because the employer wanted to meet with her about allegedly practicing beyond the scope her nursing license and she feared as a result she would lose the RN license issued to her by the OSBN. Audio at ~21:28, ~22:33. However, claimant vigorously argued at hearing she had not practiced beyond the authority allowed under her RN license and, as such, it is difficult to accept that she truly thought she was likely to lose her nursing license upon an OSBN investigation. Even if claimant was subjectively concerned about retaining her RN license, she did not contend that any complaint had been made to the OSBN at the time she quit work, and she did not contend that employer had told her she would be imminently discharged for exceeding the scope of her license or that she would be discharged at all. Moreover, the regulations governing OSBN's disciplinary processes do not set forth any mandatory grounds under which an individual's RN license must be automatically revoked. OAR 851-031-0006 (December 21, 2005); OAR 851-031-0007 (August 14, 2007). OSBN has many options less stringent than revocation or suspension of the individual's license if it concludes a nurse violated its standards of practice, including reprimanding the nurse (but not encumbering his or her license), placing the nurse on probation or limiting the scope of the nurse's practice. See http://www.oregon.gov/OSBN/pages/consumer_help.aspx. In the absence of any OSBN disciplinary process having been commenced, any possible harm to claimant's RN license was purely speculative. On this record, claimant did not demonstrate that the loss of her RN license was a likely result of if she met with the employer on January 7, 2016 and that the need to avoid that meeting was a grave reason to leave work.

Claimant did not establish that it is more likely than not that the circumstances under which she left work were so grave that no reasonable and prudent person would have continued to work for the employer an additional period of time, and, therefore, did not show good cause for quitting work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-59804 is affirmed.

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

DATE of Service: July 14, 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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