

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0732

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115055). Claimant filed a timely request for hearing. On June 3, 2016, ALJ Shoemake conducted a hearing and issued Hearing Decision 16-UI-61062, affirming the Department's decision. On June 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant argued that the ALJ erred in excluding documents from evidence claimant submitted, including articles concerning problems with opioid prescription, misuse, addiction and related problems. The record shows, however, that claimant indicated there was nothing contained in the documents that he could not offer into evidence through his testimony. *See* Audio recording at ~10:50, ~11:45. The record also shows that the ALJ allowed claimant the opportunity to testify to the contents of the documents, and did not unduly restrict claimant from presenting testimony about them. We therefore conclude that the ALJ did not err in excluding the documents themselves from evidence.

FINDINGS OF FACT: (1) Golden Dawn Clinic employed claimant as a physician's assistant from January 18, 2016 to March 18, 2016.

(2) Claimant read articles in the news and professional journals specifying standards for prescribing opioids to patients and potential harm that could result to patients if overprescribed. Claimant believed the employer's clinic overprescribed opioid medications to its patients. Claimant was concerned that one of the clinic's patients might be harmed if overprescribed. He was also concerned that he might be involved in a medical examiner's board investigation, or his license could be affected, in the event a patient under his or the employer's care was harmed, or if an investigation occurred.

(3) Claimant was not willing to prescribe opioid drugs in quantities he felt were inappropriate, and he thought his supervising physician was unresponsive to his concerns or suggestions with respect to the issue. When taking appointments with patients who were prescribed opioid medication, claimant prescribed two-week quantities, and then had the patients return to the clinic to follow-up with others for

additional care and opioid prescriptions if the other physician's assistants deemed it necessary. Claimant did not feel that was a sustainable practice, and it did not address his underlying concerns about the employer's opioid prescription practices.

(4) On approximately March 16, 2016, claimant's supervisor spoke with claimant about charting. Claimant wanted to discuss charting practices with the supervisor, but concluded his supervisor was not receptive to claimant's ideas or willing to listen to him. At the end of that conversation, claimant told the supervisor that he was quitting work at the end of the week. Claimant did not give the supervisor a specific reason he was leaving work, except that he was dissatisfied with the supervisor's unwillingness to listen to claimant or consider his ideas with respect to the employer's practices.

(5) Effective March 18, 2016, claimant quit work, primarily based on his conclusion that the supervisor was not willing to listen to claimant or consider his ideas, particularly with respect to the employer's opioid prescription practices.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 quit work primarily based on his conclusion that his supervising physician was unwilling to listen to claimant's concerns or suggestions about the employer's opioid prescription practices. Although the significant dangers associated with opioid misuse and over-prescription are generally known based on media coverage of current events, and were known particularly to claimant based on his study of professional journals related to his occupation, claimant did not establish that the situation was grave at the time he quit work.¹ He did not present evidence sufficient to establish that the employer's opioid prescription practices endangered patients, particularly given that his supervising physician and other physician's assistants did not apparently share claimant's concerns. He did not present evidence sufficient to establish that patients under the employer's care generally, or his care specifically, were being prescribed inappropriate quantities of opioid drugs, or were prescribed opioid drugs over an inappropriate duration, given considerations of the patients' ages, health, medical histories, diagnoses, or plans of care. Nor did claimant present evidence sufficient to establish that the employer was clearly exceeding industry guidelines with respect to opioid prescription quantities and durations such that it

¹ We reviewed the content of excluded Exhibit 1 during the process of considering the merits of claimant's argument that the ALJ erred in excluding them from evidence. Although, as we noted on page 1 of this decision, we ultimately concluded that the ALJ did *not* err in excluding the articles from evidence, and, therefore, did not consider the contents of the articles when reaching this decision, it is appropriate to note that, for the reasons explained herein, the outcome of this decision would remain the same even if we had concluded otherwise.

was placing its patients in imminent danger, to the extent that it might have created a grave situation or personal risk to claimant as an employee of the clinic or as a physician's assistant with his own license to protect.

The term "grave" is not defined in the Department's administrative rules, but its customary, popular definition generally includes "likely to produce great harm or danger" or "significantly serious."² While claimant's testimony clearly established that he was concerned about his supervisor's unwillingness to hear his concerns and suggestions was frustrating for him, and it is apparent from the record that claimant's working conditions and relationship with his supervising physician were unlikely to change if claimant remained employed, claimant did not show that situation was so significantly serious or likely to produce great harm or danger that the supervisor's unwillingness to hear or heed claimant's opinions on the employer's practices created a grave situation for claimant. Absent evidence that the employer's opioid prescription practices and/or claimant's working conditions or relationship with his supervisor presented claimant with an immediately grave situation, we conclude that claimant did not establish that he had good cause for quitting work. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-61062 is affirmed.

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

DATE of Service: July 26, 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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² <http://www.merriam-webster.com/dictionary/grave>