

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1016**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 81901). The employer filed a timely request for hearing. On August 9, 2016, ALJ Micheletti conducted a hearing, and on August 10, 2016 issued Hearing Decision 16-UI-65345, concluding claimant voluntarily left work without good cause. On August 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument and the entire hearing record.

**FINDINGS OF FACT:** (1) Surgis Management Services/Redmond employed claimant as a material manager and surgical technician in its surgery center from July 25, 2005 to February 23, 2016.

(2) In October 2015, the employer's administrator died. After October 2015, the employer began laying off staff.

(3) In October 2015, claimant began to experience work-related stress that caused him difficulty sleeping, anxiety, and feelings of dread and depression. Claimant's anxiety and depression was treated with medication.

(4) Claimant was concerned that the employer allowed its staff to perform longer surgeries than it had in the past, requiring staff to work extended shifts and allegedly affecting patient safety. In the past, most surgeries had been no longer than 4.5 hours long. After October 2015, the staff began performing some 7-hour surgeries. On two or three occasions, claimant told the employer's regional vice president, who was the acting administrator, his concerns about permitting the longer surgeries. She spoke to the surgeons and anesthesiologists about claimant's concerns, and the doctors determined whether to proceed with the surgeries. The doctors continued to perform the longer surgeries.

(5) The employer's website contained contact information for resources where claimant could have reported his concerns; these resources included the employer's market president, senior vice president for clinical operations, and an employee complaint hotline.

(6) In December 2015, the employer hired a new administrator. Claimant mentioned his concerns about staffing levels at staff meetings and to the new administrator.

(7) On February 23, 2016, claimant voluntarily left work because he believed patients' safety was being jeopardized because of understaffing.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude 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 P2d 722 (2010). Claimant had anxiety and depression, likely permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

Claimant quit work based on his conclusion that the employer was permitting doctors to perform surgeries that were too long based on the staffing levels at the surgery center where he worked. The employer did not contest claimant's testimony that the surgery center had reduced staff after October 2015 and had begun to conduct longer surgeries than it had done in the past. However, the record does not establish by a preponderance of the evidence that the changes in staffing and the duration of surgeries affected patient safety. The record does not show that the doctors performing the surgeries opposed the longer surgeries due to safety concerns, or that the surgery center was in violation of state staffing laws. Even assuming that the changes increased the relative risks for patients, the record fails to show that the resulting level of risk to patients was such that it created an unsafe situation for patients or a grave situation or personal risk for claimant. Nor does it show that claimant lacked reasonable alternatives to quitting when he did. Claimant had the reasonable alternative of contacting the employer's higher levels of management or the state health authority. He did not show that it would have been futile to do so.

Because the record fails to show that, more likely than not, no reasonable and prudent person with anxiety and depression, under the conditions claimant described, would have continued working for the employer for an additional period of time, claimant did not have good cause for quitting work. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-65345 is affirmed.

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

**DATE of Service: September 27, 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](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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