

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0401

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93612). Claimant filed a timely request for hearing. On March 13, 2017, ALJ Monroe conducted a hearing at which the employer failed to appear, and on March 16, 2017 issued Hearing Decision 17-UI-79089, affirming the Department's decision. On March 5, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Renal Care Group, Inc. employed claimant as a dialysis nurse from May 23, 2016 to December 7, 2016.

(2) Claimant has more than 30 years of nursing experience, but had not worked before as a dialysis nurse. For a nurse with previous nursing experience, the expected training time was six months. The training period was divided into clinical and hospital training. Claimant completed the clinical portion of her training in late October 2016, and began the hospital training.

(3) Claimant was dissatisfied with the hospital training because she was initially assigned to work with different preceptors. In early November 2016, claimant complained to her supervisor that she felt confused by the different preceptors. The supervisor responded by trying to schedule claimant to work with the same preceptors each shift. Claimant complained again to her supervisor when she became concerned that the preceptors lacked the requisite experience to teach her, and requested to work with two particular preceptors. The supervisor refused and told claimant she did not believe they were the best candidates to train claimant due to some performance issues. The supervisor also explained to claimant that the employer was trying to improve the preceptors' training.

(4) In early November 2016, claimant complained to three supervisors that some nurse preceptors were engaging in practices that did not comply with the employer's policies or State Board of Nursing guidelines. Claimant's immediate supervisor agreed that one of the medication practices was noncompliant and told claimant she was not required to engage in the noncompliant practice. On November 11, 2016, the supervisor held a staff meeting during which she addressed some of claimant's concerns about violations of the State Board of Nursing guidelines, including the medication practice that concerned claimant. On November 12, 2016, the supervisor sent staff an email stating she was trying to resolve the medication matter by addressing it with hospital staff. Exhibit 2 at 4-5.

(5) On November 5, 2016, one nurse preceptor "cussed [claimant] out" when claimant asked questions about the preceptor's methods. Transcript at 39. Claimant reported the incident to a manager who met with claimant and discussed her concerns, and told claimant she would not be scheduled to work with that preceptor again.

(6) In mid-November 2016, claimant took a two-week medical leave of absence due to an eye infection.

(7) Claimant had received a performance improvement plan before December 2016. On December 3, 2016, claimant met with her immediate supervisor to discuss follow-up notes for the plan. At the end of the meeting, claimant began writing "sign under protest" at the bottom of the plan. Exhibit 2 at 10. The supervisor "snatched" the form from claimant's hand, and told claimant, "You don't write nothing [sic] on this form." Transcript at 10. Claimant asked the supervisor how she would include a comment on the plan, and the supervisor wrote the date and "see attachment" on the plan. Claimant submitted a detailed attachment to the employer to include with the plan. Exhibit 2 at 11-13.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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 "last straw" that prompted claimant to quit work on December 7, 2016, was the incident on December 3, 2016, when claimant's supervisor "snatched" claimant's performance improvement plan from claimant while claimant was writing on it. Exhibit 2 at 2. To the extent claimant quit work because of how the supervisor treated her, claimant did not meet her burden to show good cause to quit. Although a supervisor's behavior may be good cause to leave work if it creates an "abusive" or "oppressive" work environment, claimant did not establish that the supervisor's behavior met that threshold. See *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 will disqualify the worker from

unemployment benefits). Claimant did not show that the supervisor's conduct was so offensive or frequent that it created a situation of such gravity that claimant had no reasonable alternative but to quit. The supervisor's act of snatching a paper from claimant was aggressive, unprofessional and rude. However, claimant testified that the December 3 incident was the only interaction of that type that occurred with the supervisor, and that her other concern about the supervisor was that "she just doesn't listen." Transcript at 50. That the supervisor did not "listen" to claimant was not supported by the record.

Claimant testified that the other issues that caused her to leave were the inconsistent advice she received from her nurse preceptors, their lack of experience and their failure to follow the employer's policies and state guidelines. Transcript at 7. The supervisor addressed claimant's complaints about the inconsistencies and confusion claimant experienced from having rotating nurse preceptors by scheduling claimant with the same preceptors every shift. She addressed claimant's complaint about the preceptors' experience levels by assuring claimant the employer was trying to train them further. There was no evidence the training would not occur or that it would be insufficient to remedy claimant's complaint. The supervisor addressed claimant's complaint about a medication issue by acknowledging the problem in a staff meeting and email to the nurses, and recommending a solution through the hospital. Again, there was no evidence to show the supervisor was insincere or that she would fail to address the matter as she proposed. In addition to the issues addressed by claimant's supervisor during November 2016, claimant identified an incident when a nurse preceptor "cussed" at her. Claimant reported the matter to a manager and the manager did not assign claimant to work with that preceptor again. Based on the employer's willingness to respond to claimant's complaints, a reasonable and prudent person who wanted to remain employed would not have concluded that there was no reasonable alternative to leaving work when she did.

Claimant's exhibit states claimant experienced anxiety, headaches and loss of appetite due to work. Exhibit 2 at 9. The record does not support that claimant's work-related symptoms created a health situation of such gravity that claimant had no alternative but to leave work when she did.

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

DECISION: Hearing Decision 17-UI-79089 is affirmed.

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

DATE of Service: May 1, 2017

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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