

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0828

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101056). Claimant filed a timely request for hearing. On July 7, 2017, ALJ Sgroi conducted a hearing at which the employer failed to appear, and issued Hearing Decision 17-UI-87434, concluding the employer discharged claimant, not for misconduct. On July 11, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: With its application for review, the employer requested that EAB reopen the hearing because the Office of Administrative Hearings (OAH) did not admit two documents the employer mailed to OAH a week before the hearing, and because the employer was unable to participate in the hearing due to an unscheduled meeting. The documents submitted with the employer's request are a June 28, 2017 letter from the employer to OAH and a copy of a May 1, 2017 demand letter from claimant's attorney to the employer. These documents are hereby admitted into the record as EAB Exhibit 1. OAR 471-041-0090(2) (October 29, 2006) allows admission of a party's new information into evidence provided that it is relevant and material to this determination, and factors or circumstances beyond the party's reasonable control, such as OAH's failure to receive the information, prevented the information from previously being admitted into evidence. A copy of EAB Exhibit 1 is being mailed to the parties with this decision, as is a copy of Exhibit 1, admitted at hearing. Any party that objects to our admitting EAB Exhibit 1 into evidence must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the documents will remain in the record at EAB Exhibit 1.

The employer asserted it was unable to attend the hearing due to an important unscheduled meeting. However, the employer did not show what attempt, if any, it made to participate in the hearing despite the conflict, or to have the hearing postponed. Absent such a showing, the employer failed to establish factors or circumstances beyond its reasonable control prevented it from offering its information into the hearing record. The employer's request to have EAB consider new information other than the documents admitted as EAB Exhibit 1 is denied. EAB considered only information received into evidence at the hearing and EAB Exhibit 1 when reaching this decision.

FINDINGS OF FACT: (1) Pine Eagle Clinic, LLC, employed claimant from November 2015 to May 1, 2017 as a medical assistant.

(2) In addition to her medical assistant position, the employer agreed claimant would work cleaning the employer's clinic after hours for a flat fee of \$600 per month.

(3) In 2016, the employer hired a new clinic administrator. About two months after she was hired, the administrator told claimant that the administrator's son, who was not an employee of the clinic, had made charges on the employer's credit card. Later the same day, claimant told her supervisor what the administrator had told her. Claimant's supervisor told claimant that she would report the information to the employer's board of directors. Exhibit 1 at 2.

(4) Claimant felt that the administrator began to treat her differently after claimant reported the credit card information. The administrator would "glare at [claimant] with mean looks daily," and "talk down" to claimant. Exhibit 1 at 2. Claimant tried to "smooth things over" by telling the administrator her actions were not "personal," but that she had felt obligated to inform her supervisor about the administrator's son using the employer's credit card. Exhibit 1 at 2. Claimant did not notice an improvement in the administrator's behavior after she spoke to her about the incident.

(5) One week after claimant reported the credit card information, in February 2016, the administrator discussed the personal health information of claimant's son with a person who was not authorized to receive that information. Exhibit 1 at 3, 6.

(6) The administrator made changes to claimant's schedule, creating conflicts between claimant's family responsibilities and her work schedule.

(7) The administrator told claimant she would end some of claimant's employee benefits if claimant or other staff members requested that building maintenance be completed. Exhibit 1 at 3.

(8) Before claimant reported the credit card incident, the employer had permitted claimant to begin her cleaning duties during her day shift if she had completed her medical assistant duties. The administrator no longer permitted claimant to begin her cleaning duties during her day shift.

(9) Before March 2017, the employer had not deducted money from claimant's cleaning fee. During March and April 2017, on two occasions, the administrator deducted money from claimant's earnings. On one occasion, the administrator deducted part of claimant's monthly cleaning fee for evenings that claimant did not clean the office when claimant was attending work training out of town. On the other occasion, the employer deducted part of claimant's monthly fee when claimant was on vacation. As a result, claimant was unable to pay her child care provider, and claimant lost her child care provider.

(10) Claimant felt stress due to the administrator's actions at work. Claimant had difficulty sleeping and felt distracted and fearful. Exhibit 1 at 3.

(11) The clinic's board of directors had authority over the office administrator. Claimant complained repeatedly to the board of directors about how the administrator treated her, but the board did nothing to change the administrator's actions.

(12) On April 13, 2017, one medical provider from the clinic, who had been claimant's immediate supervisor, left the clinic. On April 16, 2017, the employer's board of directors told claimant the administrator would be claimant's immediate supervisor.

(13) On April 16, 2017, the administrator directed claimant to assure a business partner that the employer would provide services to the business partner's employees free of charge. Claimant believed the statement to be untrue and told the administrator she refused to make the statement to the business partner. Claimant explained to the administrator that she would not make the assurances to the business partner because she believed the statement was false.

(14) On April 16, 2017, claimant was unable to submit forms to a governing agency to permit the clinic to continue providing vaccinations because the medical provider who left on April 13 had not signed the forms before she left. The administrator asked claimant to contact the agency and withhold the information that the provider no longer worked for the clinic. Claimant considered the administrator's instructions to be dishonest, and told the administrator she would not be untruthful to the agency. Claimant told the office administrator she was taking a personal day for the rest of the day, and left work. Claimant did not return to the clinic to perform medical assistant duties.

(15) After claimant left the clinic on April 16, claimant continued to take personal time off work from her medical assistant position due to the stress she felt when she worked with the administrator, but continued to report to the clinic after it closed each day to perform her cleaning duties. Claimant did not clean the clinic after April 24, 2017 because the employer changed the locks on the clinic doors and did not give claimant a new key.

(16) On about April 25, 2017, claimant sought medical treatment for her stress and her doctor diagnosed her with acute anxiety. Claimant was prescribed medication to control this condition.

(17) On May 1, 2017, claimant met with the employer's board to discuss her complaints about the administrator's treatment of her. Claimant was dissatisfied with how the board responded to her complaints and felt the board "dismissed" them. Audio Record at 32:26 to 32:42. The board told claimant the employer was ending her cleaning contract. The board asked claimant if she wanted to continue working for the employer, and claimant stated that she did. EAB Exhibit 1. The employer did not tell claimant she could not continue working as a medical assistant for the employer.

(18) Later on May 1, 2017, claimant's lawyer sent the employer a letter stating claimant quit work that day. Claimant quit work due to how the administrator treated her at work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

Work separation. It is first necessary to determine the nature of the work separation in this case. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Although the employer removed claimant's cleaning duties from her on May 1, 2017, it demonstrated its willingness to allow claimant to continue working as a medical assistant when it asked her on May 1 if she wanted to continue working for the employer. Neither party contends that the employer was not willing to let claimant continue working as a medical assistant, at least for some additional period of time. Claimant submitted a letter of resignation to the employer stating she quit on May 1. Because claimant could have continued to work for the employer for an additional period of time, but did not, the work separation was a voluntary leaving.

Voluntary Leaving. 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). Although claimant experienced anxiety arising from her employment and was prescribed medication to control this condition, because the record does not show claimant's condition was a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h), we do not apply a modified standard to establish good cause.

Claimant's description of the administrator's conduct toward claimant, and the extent to which it was distressing to claimant, is unchallenged in the record. From claimant's description and reaction, it may be inferred that claimant experienced the administrator's behavior as abusive. Claimant took reasonable steps to address the administrator's behavior by speaking directly to the administrator about her conduct and complaining multiple times to the employer's board of directors, which had authority over the administrator. The record shows that any action the employer may have taken to improve claimant's working conditions did not stop the conduct that distressed claimant. On this record, a reasonable and prudent employee would have concluded that the administrator's continued unpredictable and abusive behavior, which the board did not deter and which caused claimant's acute anxiety, created a grave situation to which claimant had no alternative but to leave work.

Claimant had good cause to leave work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

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

DECISION: Hearing Decision 17-UI-87434 is affirmed.

DATE of Service: August 7, 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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