

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1388**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72649). Claimant filed a timely request for hearing. On November 13, 2017, ALJ Murdock conducted a hearing, and on November 15, 2017 issued Hearing Decision 17-UI-96896, affirming the Department's decision. On November 30, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Riverbend Dental Clinic employed claimant as a dental assistant from March 13, 2017 until September 19, 2017.

(2) During the six months that claimant worked for the employer, claimant was diagnosed with hypothyroidism. In consultation with her physician, claimant declined to take medication for that condition. Since claimant missed some days of work due to the condition, claimant told both of the employer's dentists that some of her absences from work were attributable to it. When claimant told the dentists that she had decided not to take medication to treat her hypothyroidism, one of the dentists told claimant that she should reconsider that decision because she needed to take care of herself in order to provide care for the employer's dental patients. Claimant interpreted the dentist's comment as "scolding" her about a personal and private medical decision. Transcript at 8, 9.

(3) During claimant's employment, she came to especially dislike the way one of the dentists treated her. When the dentist pointed out mistakes claimant had made in performing her work, claimant perceived the dentist was "scolding" her as if she were a child and engaging in "rants" directed at her. Transcript at 7, 10, 12. Sometimes the dentist raised her voice or "yelled" when correcting claimant. Transcript at 12. Claimant often cried when the dentist addressed her work performance. At least once, claimant felt disconnected from everyday events after having been scolded by the dentist. Claimant brought up that feeling and reaction with her physician. The physician did not diagnose that reaction as due to anxiety or diagnose claimant as having an anxiety disorder. The physician told claimant that "sometimes when people do not know how to react, \*\*\* people will have, you know, feel like an elephant is sitting on

your chest or have[] difficulty breathing.” Transcript at 10-11. Claimant’s physician did not prescribe any medications or recommend a course of treatment to ameliorate claimant’s reactions to the dentist.

(4) Once, after experiencing what claimant perceived as a week of “constant scolding” by the dentist whom she disliked, claimant went to the restroom to collect herself. Transcript at 11. Shortly after, the dentist knocked on the restroom door and told claimant “to hurry up and get out of there” because claimant was not being paid to be “sit[] [and not work] on [the employer’s] clock.” *Id.* Claimant thought that the dentist was not sympathetic to how she reacted to the dentist’s treatment of her.

(5) On Monday through Wednesday, September 11 through 13, 2017, claimant called in sick to work. Thursday and Friday, September 14 and 15, 2017 were claimant’s regularly scheduled days off from work. On Friday, September 15, 2017, the dentist whom claimant disliked called claimant to ask when claimant thought she was going to be able to work. The dentist commented to claimant that she was “not very dependable” in reporting for work and had frequently been absent from work. Transcript at 5. The dentist also inquired of claimant if she was going to clean the office during the upcoming weekend. Claimant had recently volunteered to clean the employer’s office on weekends in order to earn additional income. Claimant stated she intended to clean the employer’s office on Sunday, September 17, 2017. The dentist told claimant she needed to perform the cleaning on Saturday, September 16, 2017. The dentist wanted the cleaning to occur on Saturday to ensure that it would not result in claimant receiving overtime pay. Claimant responded that she was not able to perform the cleaning on Saturday because she had made other plans for that day. The dentist then told claimant that she would have her domestic partner perform the office cleaning on Saturday, and claimant would not need to perform it on Sunday. Claimant’s next scheduled work day was Tuesday, September 19, 2017.

(6) On Saturday, September 16, 2017, claimant traveled to the beach on an outing with two of her coworkers. While at the beach, the coworkers commented to claimant that they and claimant needed to concoct a story in order to conceal from the dentists that they had gone to the beach together. Claimant assumed the coworkers thought the dentists would not approve of them having accompanied claimant to the beach. Claimant did not want to participate in such a fabrication.

(7) On Tuesday, September 19, 2017, claimant did not report for work as scheduled and did not report for work thereafter. Claimant had decided to quit work after the beach trip with her coworkers because she did not want to be part of a fabrication about the beach outing she had taken with them on Saturday, September 16, 2017. Claimant did not expressly communicate to the employer that she was leaving work because she did not want to have any more dealings with the dentist she disliked and did not know how to explain her leaving to the other dentist. On September 19, 2017, claimant voluntarily left work by failing to report for work that day.

**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). For an individual with permanent or long-term physical or mental impairment” as defined at 29 CFR §1630.2(h), good cause for leaving work is such that a reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant testified that she had hypothyroidism, which was presumably a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). Although claimant described one episode in which she reacted to the dentist whom she disliked in a way that might have been consistent with anxiety, when she reported this incident to her physician, the physician did not diagnose with her an anxiety condition and there was no evidence that the physician prescribed medication or a course of treatment to address anxiety. Transcript at 10. There was no evidence in the record as to the duration of any supposed anxiety that claimant might arguably have experienced. Accordingly, the evidence is insufficient to show that claimant was subject to anxiety as a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). On this record, the standard for determining whether claimant had good cause to leave work is modified only to the extent that it is assessed from the perspective of reasonable and prudent person with hypothyroidism.

Claimant contended she left work when she did because the dentist whom she disliked “scolded” her when they spoke on September 15, 2017 about her not being dependable in reporting for work, yelled at her for not being able to clean the office on Saturday, September 16, 2017 rather than on Sunday, September 17, 2017, and stated that she was going to find someone else to perform the weekend cleaning. Transcript at 5, 6. Late in her testimony, claimant also contended that she left work when she did because the two coworkers with whom she had gone to the beach on Saturday, September 16, 2017 indicated that they and claimant needed to conceal from the dentists that they had gone to the beach together, even if the trip was off-duty, and fabricate some story for the dentists to account for their activities on that Saturday, and claimant did not want to work where she was forced to lie. Transcript at 27-29.

With respect to claimant’s first stated reason for quitting, it appears that claimant viewed her conversation with the dentist on September 15, 2017 as the culmination of many unpleasant and demeaning interactions she had with the dentist during the six months that she worked for the employer. It appears the workplace atmosphere as experienced by claimant was disagreeable, and claimant intensely disliked the perceived manner in which the dentist frequently rebuked, “scolded” and “ranted” at her. Transcript at 5, 7, 9, 12, 13. Although claimant stated that the dentist sometimes yelled at her, claimant did not show that, even if voices were raised, the behavior of the dentist toward her was so extreme that it was tantamount to personal abuse or was otherwise unbearable. For example, claimant did not contend that the dentist called her names, issued personal insults or slurs, or engaged in lengthy fits of temper or tirades. *See McPherson v. Employment Division*, 285 Or 541, 557, 597 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). Although it is understandable that, given her perceptions, claimant disliked the supervisory style of the dentist, claimant failed to show that a reasonable and prudent employee with hypothyroidism would have concluded that remaining at work with the dentist was intolerable and constituted a grave situation from which there was no reasonable alternative other than to leave work.

With respect to claimant's second stated reason for quitting, it is not clear why claimant's coworkers would have brought up the need for fabricating a story to account for their own and claimant's whereabouts when off-duty. Accepting that there was a need to conceal from the dentists that they all had gone together to the beach on Saturday, September 16, 2017, it also is not clear why a story needed to be concocted for their activities that day, rather than simply remaining silent about what they had done. As well, claimant did not show that grave consequences likely would have befallen her if she chose not to join with her coworkers in fabricating an account of what they had done on September 16, 2017, but had chosen to be forthright with the employer. Claimant did not meet her burden to show that she faced a grave situation if she did not concoct a story with her coworkers about their activities on September 16, 2017.

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

**DECISION:** Hearing Decision 17-UI-96896 is affirmed.

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

**DATE of Service: January 8, 2018**

**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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