

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0151

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141220). Claimant filed a timely request for hearing. On February 7, 2018, ALJ S. Lee conducted a hearing at which the employer did not appear, and on February 9, 2018 issued Hearing Decision 18-UI-103030, affirming the Department's decision. On February 12, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Tuality Healthcare employed claimant as a medical assistant from sometime in May 2013 until December 14, 2017.

(2) As part of her job, claimant was expected to conduct urodynamic studies on patients to assist physicians in evaluating bladder conditions. The studies required inserting bladder and rectal catheters in, placing electrodes on, and introducing fluids to patients. Claimant found the studies complicated and difficult to perform correctly. Although claimant asked repeatedly for additional training, the employer arranged only one training session, which claimant did not think was sufficiently comprehensive. Claimant asked the physicians not to schedule more than one urodynamic study per day for her to conduct because the studies were "emotionally and physically stressful." Audio at ~14:47. While the physicians initially agreed to limit the number of urodynamic studies that were scheduled, they later told claimant that was not feasible and they would not limit the studies to only one per day. Claimant was displeased.

(3) On September 15, 2017, claimant returned to work after an absence of approximately two weeks due to surgery. That day, claimant dealt with a patient who felt unsafe in her home. Claimant tried to, but could not locate a packet of information that the employer expected her to give to patients who expressed that they felt unsafe. After searching "frantically" for the packet, claimant asked another medical assistant to assist her in locating it and that assistant told claimant that she had thrown the

packet away because it was not being handed out. Audio at ~ 9:29. In their interaction, the medical assistant “screamed and yelled” at claimant. Audio at ~8:29. Ultimately, claimant obtained a copy of the packet from another medical assistant and provided it to the patient. Later that day, claimant spoke to her supervisor about what had transpired with the other medical assistant. Claimant’s supervisor told claimant to go home early, before the end of her shift, because the supervisor “did not need [her] attitude there.” Audio at ~11:12.

(4) Claimant next reported for work on September 19, 2017. On that day, claimant determined that she felt “super-uncomfortable” working at a desk next to the medical assistant who had yelled at her on September 15, 2017 and doing so made her feel “really yucky.” Audio at ~11:50. On that day, claimant turned in a resignation notice to her supervisor. However, the supervisor and the physicians with whom claimant worked asked her to stay. Claimant agreed to continue working.

(5) After September 19, 2017, it became increasingly uncomfortable for claimant to work in close proximity to the medical assistant who had yelled at her. Claimant perceived the medical assistant as “glaring” at her and giving her “dirty looks.” Audio at ~15:40. Claimant discussed her discomfort several times with her supervisor. The supervisor recommended that claimant speak with the medical assistant and apologize to her. However, the supervisor had advised the medical assistant not to speak to claimant. Claimant spoke to the other medical assistants, and some of them were willing to change desks with claimant, which would have removed claimant from the immediate vicinity of the medical assistant who had yelled at her. Subsequently, claimant asked her supervisor if she could trade desks with one of the medical assistants who was willing, but the supervisor did not act on claimant’s request.

(6) On October 19 or 20, 2017, claimant sent an email to the human resources department, stating that she wanted to discuss issues she was having with the workplace environment. A human resources representative responded that someone from that department would get in touch with claimant.

(7) Around that time, claimant again asked her supervisor if she could have permission to change desks with another medical assistant. Claimant’s supervisor stated that she was not going to let claimant switch desks, but had decided claimant could use a small desk in a corner of the supervisor’s office. Claimant began using that small desk, but found her new work area uncomfortable and disruptive since she did not have any drawers in which to store office supplies and paperwork, the supervisor spoke often and loudly on the phone, and other staff members frequently came into the shared work area to speak with the supervisor and sat at the desk that had been assigned to claimant. Claimant thought the work environment in the supervisor’s office was “awful” and “horrible.” Audio at ~16:24.

(8) On October 31, 2017, claimant went to the human resources office in person and spoke with a representative about the conditions in which she was working. The representative told claimant to place all the office supplies and personal belongings that she could not store in her work area in a box and put that box on her supervisor’s desk. A human resources representative then spoke with claimant’s supervisor about claimant’s difficulties in working at the small desk in the supervisor’s office. A short time later, claimant’s supervisor told claimant she was clearing out one of the drawers in the office for claimant’s use.

(9) On November 14, 2017, claimant was not able to take a lunch break. Following instructions she had received from her supervisor about missed breaks, claimant sent an email that day to the supervisor

notifying her that she had missed that break. Claimant's supervisor responded that would "make a note of it." Audio at ~19:00.

(10) On November 29, 2017, claimant reviewed the paycheck covering the period that included November 14, 2017 and observed she had not been paid for the lunch break she had missed on November 14, 2017. Claimant became concerned that she might not have been paid for other lunch breaks she might have missed. On that same day, November 29, 2017, the same human resources representative who claimant had spoken with on October 31, 2017, sent claimant an email asking claimant to meet with her about what claimant considered objectionable in the work environment. In response, claimant told the human resources representative that she probably was going to quit work that day and declined to meet with her.

(11) On November 30, 2017, claimant submitted her resignation notice to the employer indicating that her last day of work was going to be December 14, 2017. Claimant decided to quit when she did principally because she did not receive pay for the skipped lunch break on November 14, 2017. Claimant voluntarily left work on December 14, 2017.

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). 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.

Under some circumstances, there might be good cause for an individual to leave work if the individual is subjected to unlawful working conditions that are ongoing at the time of a voluntary leaving. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (claimant had good cause to leave work when the employer's wage practices were ongoing and the lawfulness of them disputed as of the time of the leaving) and compare *Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (claimant did not have good cause to leave work when the employer's allegedly unlawful wage practices had not continued and were not ongoing at the time of the leaving and only the issue of the amount of restitution for back pay continued). While it is an unlawful working condition for an employer to require a claimant to skip breaks and not to pay a claimant for those skipped breaks, claimant did not show that what happened on November 14, 2017 was part of an ongoing condition that the employer imposed or condoned, that the employer intended not to compensate her for working through her break on that day or that such an occurrence was likely to recur after that date. ORS 653.261; OAR 839-020-0050(2)(a)-(b) (January 1, 2014). Claimant's unsubstantiated concerns that she might not have been compensated for breaks that she missed on days other than November 14, 2017 do not give rise to an objectively grave situation.

With respect to the work atmosphere to which claimant objected, claimant's description of it and her reactions to it do not appear to constitute a situation of gravity. While claimant might have felt uncomfortable working in that atmosphere, the record shows that the employer had made efforts to address claimant's concerns throughout her employment. Moreover, she did not describe any specific emotional, psychological, physical or other harm she experienced as a result of it that was objectively grave. As well, assuming the work atmosphere might have been a grave circumstance for claimant at the time she quit, claimant did not show that she had no alternative other than to leave work when she did. That the human resources representative contacted claimant to discuss the status of her problems with the work environment on November 29, 2017 shows that the employer was still working with claimant to address her concerns and complaints and willing to continue working with claimant through the date she quit work, and that working toward a resolution with the human resources department in lieu of quitting would not have been futile.

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

DECISION: Hearing Decision 18-UI-103030 is affirmed.

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

DATE of Service: March 13, 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. 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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