

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0707

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 5, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91949). Claimant filed a timely request for hearing. On July 2, 2018, ALJ Snyder conducted a hearing, and on July 10, 2018 issued Order No. 18-UI-112853, affirming the Department's decision. On July 13, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Northwest Primary Care Group PC employed claimant as a licensed polysomnographic technologist in its sleep disorders clinic from April 2, 2018 until May 5, 2018. Claimant duties as a polysomnographic technologist involved performing sleep studies of patients with suspected sleep disorders.

(2) When the employer hired claimant, she had substantial experience as a polysomnographic technologist and had performed and scored many sleep studies.

(3) At hire, claimant understood that she would be the technologist performing sleep studies on the day shift. While working on the day shift, the employer initially assigned claimant to perform medical coding, billing and collections in addition to sleep studies. Claimant was not experienced in the areas other than sleep studies to which she was assigned and needed to learn how to perform those other tasks using computer software. Claimant understood that the patient care team lead worker was her direct supervisor. The lead was not licensed in the field of polysomnography and claimant did not believe the lead was licensed or certified to provide medical services in any capacity. Claimant did not believe that the lead was qualified to evaluate her work as a polysomnographic technologist.

(4) As claimant began to work for the employer, she developed concerns over clinic practices, including the cleanliness of re-usable masks, infection control, packaging errors and other issues. Claimant was concerned that the employer was in violation of generally accepted standards for polysomnography.

(5) Sometime around mid-April 2018, the manager of the sleep clinic met with staff in claimant's absence to discuss claimant's performance during her first few weeks. Shortly after, the manager of the clinic and the patient care team lead met with claimant. Claimant understood them to tell her that she was not learning coding, billing, collections and related processes using computer software as quickly as the employer would like and the employer was going to hire someone else to perform those tasks. Claimant understood the clinic manager to tell her that "it's tough when you get older [to learn] on computers." Audio at ~14:13. Claimant became emotional. Claimant then tried to explain her concerns about clinic's polysomnographic practices to the clinic manager and the lead, but claimant perceived that they did not take those concerns seriously. Claimant became frustrated because she thought that the manager and the lead were not qualified to evaluate and dismiss her concerns because they had no specialized training and were not licensed in the field of polysomnography. During this conversation, claimant also understood the patient care lead to criticize her skills in performing aspects of sleep studies. Claimant thought her skills were being critiqued and evaluated by non-licensed individuals and resented it. Sometime during this discussion, the clinic manager invited claimant to a "sex toy" party that she planned to host. Audio at ~14:50.

(6) Based on the mid-April discussion with claimant, the clinic manager understood that it would help claimant if she did not work during the day shift, which was faster paced than the night shift. Shortly after, the employer assigned claimant to perform polysomnographic studies during the night shift. Subsequently, the employer canceled two of the night shifts for which claimant was scheduled because no patients were scheduled for sleep studies on those nights. The employer offered to give claimant some day shift hours to make up for the hours she missed working on night shifts due to lack of patient appointments, but claimant declined.

(7) On the night of May 7 to May 8, 2018, claimant worked the night shift performing sleep studies. During the day shift on May 8, 2018, the day shift polysomnographic technologist, who was licensed, notified the patient care team lead that she had checked claimant's scoring of at least one of the sleep studies from the night before and there were significant errors in scoring. At around 4:00 p.m., before the start of claimant's shift, the patient care team lead sent a message to claimant at her personal email address, telling her that due to "excessive scoring errors" she had made in the sleep studies, the employer was assigning the scoring duties for all sleep studies, including those which claimant was the assigned technologist, to the day technologist. Exhibit 1. The email further stated that "[t]he night tech [claimant] is responsible for running all aspects of the study to ensure appropriate data is collected to be evaluated and scored by the [d]ay [t]ech." Exhibit 1. Claimant believed that the patient care team lead, a non-technologist, had purported to evaluate the quality of her work as a polysomnographic technologist. Claimant was upset and offended because she did not believe the lead had the qualifications to evaluate her work. Claimant also thought she had not made any mistakes in scoring the sleep studies. Claimant replied to the email, "This is the final insult. You have no idea what you're talking about. You guys can find someone else to jerk around. Good luck." Exhibit 1. Claimant did not report for work thereafter.

(8) By her reply email to the patient care team lead on May 8, 2018, claimant voluntarily left work.

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) (January 11, 2018). 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 his employer for an additional period of time.

Claimant complained about the employer’s polysomnographic practices and the employer’s evaluations of the quality of her work as a polysomnographic technologist, which were being made or considered by the clinic manager and the patient care team lead, neither of whom was trained or licensed as a polysomnographic technologist. Indeed, when the ALJ inquired of claimant what the employer might have done that would have forestalled her from quitting, claimant stated that the employer should have listened to her in preference to the non-licensed managers and she should have been in charge of those managers rather than the non-licensed managers being in charge of her. Audio at ~20:05, ~20:23. However, claimant did not challenge the testimony of the clinic manager that claimant was ultimately under the supervision of the clinic’s medical director, a physician specializing in neurology, with respect to her work as a polysomnographic technologist, and not the clinic manager or the patient care team lead. Audio at ~26:30. Claimant also did not challenge accuracy of the clinic manager’s testimony that the “excessive errors” in claimant’s scoring of sleep studies had not been determined by her, but by the licensed day shift technologist, and she had merely relayed that evaluation to claimant along with the decision that claimant would no longer be responsible for scoring sleep studies. Audio at ~24:07. In her testimony, the clinic manager agreed that neither she nor the patient care team lead were qualified to evaluate the quality of claimant’s work as a polysomnographic technologist. Audio at ~14:47.

Claimant did not meet her burden to show, as she contended, that she was being supervised in polysomnography, the work for which she was licensed, by either the clinic manager or the patient care lead, both of whom were non-licensed in that area and presumably not qualified to provide such supervision. While claimant may have disliked that non-licensed individuals were supervising her in the aspects of her job that did not involve the actual provision of polysomnographic medical services, she did not demonstrate that grave harms accrued to her from that type of supervision. Claimant also did not demonstrate that grave harms resulted to her from the fact that evaluations of her work by the licensed day shift technologist were being relayed to her by non-licensed managers. While claimant further argued at hearing that the day shift technologist was wrong about the errors she allegedly found in claimant’s scoring of sleep studies, claimant did not present evidence showing or tending to show that had she objected to the accuracy of that evaluation of her work the patient care team lead would not have sought further information from the day shift technologist or the neurologist as to the basis for the day shift technologist’s conclusions with respect to the quality of claimant’s work. Audio at ~31:30. Claimant also did not present evidence showing or tending to show that, if claimant believed her polysomnographic work was not being accurately or fairly evaluated, it would have been futile to raise her concerns directly with the neurologist, the day shift technologist or some other licensed employee with qualifications and expertise to assess her polysomnographic work. Finally, while claimant might

have raised concerns she had with the employer's polysomnographic practices with the clinic manager and the team lead, she did not show that either likely did not and would not follow up on those concerns. Nor did claimant show that, assuming inaction by the clinic manager and the patient care lead on the concerns she raised, it would have been futile to raise those concerns, if there was a sound basis for them, with the neurologist or some other employee who provided polysomnographic services, such as the day shift technologist.

On this record, claimant did not meet her burden to show that grave reasons caused her to leave work, and that there was no reasonable alternative other than for her to leave work. Accordingly, claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-112853 is affirmed.

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

DATE of Service: August 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.