

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0973**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161258). Claimant filed a timely request for hearing. On September 26, 2018, ALJ Amesbury conducted a hearing, and on October 1, 2018 issued Order No. 18-UI-117475, affirming the Department's decision. On October 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Glen S. Gerdes, DMD, PC employed claimant as a front office receptionist and dental assistant from February 22, 2012 to July 22, 2018.

(2) In late 2017 and early 2018, the employer and claimant developed concerns about one another. Claimant had concerns about another dental assistant's personal hygiene and infection control practices. Claimant perceived that the other dental assistant, who was also the office manager's sister, came to work with offensive body odor, wore dirty gloves, touched countertops and doorknobs while wearing gloves, cleaned her ears while over a sterile instrument tray, failed to wear a head covering during surgery, placed her coffee cup on a sterile surface, and sprayed surfaces with sterile spray without also wiping down the surfaces. Claimant thought the office manager's sister did not know if an instrument pouch was sterile, and did not know whether the employer had a chemical or steam autoclave.

(3) Claimant frequently complained to the office manager about the office manager's sister. The office manager investigated claimant's complaints and either resolved them to her satisfaction or notified the owner.

(4) In November 2017, the employer's owner and office manager reviewed claimant's performance and counseled her that she needed to improve in a number of areas, including her interactions with

coworkers and the office manager and her frequent complaints. Claimant thought the office manager, to whom she made the complaints, had failed to adequately address them, and that any time claimant voiced a concern about patient safety the office manager “turned it around and made it a character flaw on my part.” Transcript at 22. The owner told claimant she could bring her complaints directly to the owner, provided she had first tried to resolve her complaints through the office manager.

(5) In late 2017, the owner told claimant he would have the office manager’s sister undergo retraining with respect to infection control procedures. The owner subsequently reviewed procedures with the office manager’s sister and determined she did not require additional external training.

(6) In mid-July 2018, an employee gave claimant a carpule of anesthetic she had found in a treatment room. Claimant thought the carpule appeared to have been partially used and contaminated with blood, and that it should have been discarded in a sharps container. Claimant thought that the office manager’s sister instead had sterilized the contaminated carpule with the intent of reusing it.

(7) Claimant took the carpule to the office manager and confronted her about how the carpule’s presence in the treatment room violated infection control procedures; claimant felt the situation was dire, and that the office manager was disinterested in claimant’s concern. She felt the office manager reprimanded her for bringing the issue to her attention. She told the office manager that any time she “brought up an infection control issue it was either a personal attack on her sister or it was a character flaw of mine and all I was doing was looking out for patient safety.” Transcript at 16.

(8) The following week, claimant scheduled a coworker for a root canal. The office manager reprimanded claimant for scheduling a coworker instead of a paying patient, and told her the owner was going to be upset with her. Claimant replied that she the employer’s other doctor had asked her to schedule the coworker. The office manager said the owner would still be mad. Claimant told the office manager that she was going to speak with the owner about being reprimanded for her infection control concerns and scheduling the patient, and complained that the office manager’s sister had never been required to take infection control training but claimant had been placed on probation. Claimant said she “can’t do this anymore” and that she would be looking for another job. Transcript at 18. Claimant’s tone and demeanor caused the office manager to feel so uncomfortable she had to leave the office.

(9) On July 22, 2018, the owner called claimant to an emergency meeting to discuss the carpule incident and her confrontation with the office manager. The owner had spoken with the office manager and her sister, and told claimant that anyone could have placed the carpule in the treatment room, not just the office manager’s sister. The owner also said that the condition of the carpule was the result of a manufacturing defect, and that it had not been used, contaminated and sterilized for re-use. Claimant felt that the owner’s conclusions were unfair because he did not believe what claimant had seen and did not speak with the employee who had given the carpule to claimant before deciding what had happened.

(10) The owner indicated that claimant’s conduct with regard to confronting the office manager “falls – under harassment” and there would need to be “severe consequences.” Transcript at 27. The owner asked claimant to surrender her keys and stay home from work until the owner had a chance to consult with his attorneys. Claimant surrendered her keys, and stated she was “no longer going to work in an environment with, um the kind of nepotism, um, and lack of infection control. And that I would gather up my things.” Transcript at 29. The owner responded, “that’s fine.” Transcript at 29, 79. The owner

asked claimant to provide a written resignation notice, and she did so. Claimant ultimately quit her job because she “was ineffective in correcting infection control problems to – to make sure that the patients were safe.” Transcript at 30.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that 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 her employer for an additional period of time.

The parties did not dispute that claimant quit her job. Claimant testified that she quit her job with the employer because she “was ineffective in correcting infection control problems to – to make sure that the patients were safe.” Claimant did not establish the gravity of that situation was such that she had to quit work when she did. Claimant had a history of complaining to the employer’s office manager about her concerns, and the office manager testified that she investigated claimant’s concerns and escalated them to the owner when she deemed it necessary. Claimant testified that the owner had given her leave to complain directly to the owner if she felt the office manager had not resolved her concerns. It appears on this record that continuing to identify infection control problems to the office manager and owner when she found them was likely a reasonable alternative to quitting work when she did.

Claimant argued, in essence, that continuing to complain to the office manager and owner would have been futile because any time she “brought up an infection control issue it was either a personal attack on her sister or it was a character flaw of mine and all I was doing was looking out for patient safety.” It does appear on this record that the employer had concerns about claimant’s tone and demeanor in raising infection control issues, such as the occasion upon which her behavior was so angry in tone that the office manager felt she had to leave the office. The employer also had concerns that claimant blamed the office manager’s sister for breaches in infection control practices, such as with respect to the carpule, which claimant had not personally found and had no personal knowledge of how or when it was placed, or who placed it, in a treatment room. To the extent claimant’s methods of identifying infection control problems or bringing them to the employer’s attention were ineffective, claimant had the reasonable alternative of changing the way she notified the office manager and owner of her infection control concerns, avoiding confronting the office manager about issues in an angry tone, and avoiding blaming the office manager’s sister for issues she did not personally observe, thus bringing up the infection control issues without engaging in behavior that could be construed as a “personal attack on her [the office manager’s] sister” or “a character flaw.”

Finally, while claimant’s testimony suggested that she considered the infection control problems she identified to be ongoing, dire and unresolved, the employer’s witnesses testified that the employer investigated claimant’s infection control concerns, resolved them to the office manager’s or owner’s

satisfaction, and ascertained that the dental assistants were adequately trained. We have no basis in this record for concluding any of the witnesses were wholly lacking in credibility, such that their testimony should be disregarded; it appears that each witness was credible, and the evidence they presented as to whether or not there were unaddressed and dire infection control problems in the employer's office that left claimant with no reasonable alternative but to quit her job when she did was equally balanced at best. In a voluntary leaving case, claimant is the party with the burden of persuasion. Where, as here, the evidence is equally balanced, claimant has not met her burden to show by a preponderance of the evidence that she had good cause for quitting work.

Claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 18-UI-117475 is affirmed.

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

**DATE of Service: November 15, 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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