

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0072**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 17, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 172405). Claimant filed a timely request for hearing. On December 10, 2013, ALJ Frank conducted a hearing, and on December 31, 2013, issued Hearing Decision 13-UI-07429, affirming the Department's decision. On January 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Multnomah County School District #1 employed claimant as a para-educator, or teaching assistant, for special needs children from December 7, 2007 to April 30, 2013.

(2) During the 2012-2013 school year, claimant and two other para-educators were assigned to work in a special needs classroom under a particular teacher. One of the students in the classroom was a 6 year old boy who often wandered out of the classroom into the hall and sometimes outside and through gates into an open field. Initially, the teacher and at least two para-educators together monitored this student they considered a "runner", but during 2013, the teacher eventually assigned claimant to shadow him "one-on-one" which was stressful and challenging for her because it was difficult for her to run after him. Transcript at 7, 9.

(3) On April 3, 2013, claimant submitted a note from her doctor to the employer's human resources office that advised the employer claimant "couldn't run." Transcript at 21. On April 16, claimant, the school principal, the special education program administrator and a human resources representative

attended an “interactive accommodation meeting” to determine if claimant’s request to be exempted from running could be accommodated given her job. Transcript at 21. Shortly after the meeting the employer concluded that claimant’s request could not be honored and that she likely would be placed on leave until a vacancy in a job she could perform was found. On or about April 24, 2013, claimant notified the employer that she had decided to retire.

(4) On April 30, 2013, claimant quit to begin her retirement under PERS, effective May 1, 2013.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

At hearing, claimant asserted she chose to retire when she did because her job became a “hostile work environment” based on the behavior of the teacher she worked with and she was “headed towards a major burnout” Transcript at 5. Claimant asserted that her supervising teacher criticized her on almost a daily basis for her hearing difficulties, made faces at her and “seemed very resentful” toward her. Transcript at 13. However, claimant admitted she never complained to the school principal or the employer’s human resources department about the teacher’s alleged behavior and never applied for a transfer which she understood may have been available to her. Transcript at 11, 13.

Claimant also asserted that she chose to retire because a union representative told her the employer was considering discharging her after it gave her a letter of expectation for giving a student a “medical procedure late.” Transcript at 14. When the ALJ asked claimant if she was alleging that she actually quit to avoid a discharge, claimant responded, “possibly.” Transcript at 15. Claimant failed to establish that her hearsay evidence concerning the union representative’s alleged statement to her was the proximate cause of her decision to quit. Viewing the record as a whole, more likely than not, claimant quit to begin her retirement.

Leaving work to begin retirement is not leaving work with good cause. Claimant failed to show that no reasonable and prudent para-educator in her circumstances would have sought to maintain her employment by seeking a transfer to a suitable position and continued to work for the employer for an additional period of time. Although the decision to retire may have been prudent for claimant personally, it did not amount to good cause under Oregon unemployment law.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she re-qualifies under ORS 657.176(2) by receiving remuneration in subject employment of at least four times her weekly benefit amount.

**DECISION:** Hearing Decision 13-UI-07429 is affirmed

Susan Rossiter and D. E. Larson;  
Tony Corcoran, not participating.

**DATE of Service:** February 12, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.