

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0124

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On October 9, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #143715). Claimant filed a timely request for hearing. On December 12, 2013, ALJ Murdock conducted a hearing, and on December 27, 2013 issued Hearing Decision 13-UI-07240, affirming the Department's decision. On January 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090. We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) NPR Motels LLC employed claimant as a night auditor from August 26, 2013 to September 16, 2013.

(2) Claimant began training for the night auditor position at hire. During the training period, claimant worked with another employee who taught her how to perform the night auditor duties. The employer expected claimant to begin working the graveyard shift by herself after her final training shift on Thursday, September 19, 2013.

(3) Claimant worked an eight-hour shift. During training, the employer provided claimant meal and rest periods during which claimant was relieved of her duties. Once claimant's training period ended, and she worked alone during the graveyard shift, the employer would continue to allow her to take a meal period and breaks. Those meal and break times would be paid, but the employer would not relieve claimant of her duties during her meal and breaks. Claimant was dissatisfied with the employer's meal and break period policy, but did not complain to the employer about the policy.

(4) Claimant was concerned about her safety while working. On September 14, 2013, claimant met with her supervisor to discuss her safety concerns. She told her supervisor she was concerned about addressing noise disturbances in the hotel, and about how to respond during a robbery. She was also concerned about walking through the hotel and working alone based on stories other employees told her about the hotel being haunted. Claimant's supervisor offered to schedule claimant for a shift on September 18, 2013, when she could complete additional online safety training before she had to work by herself. The supervisor also told claimant she should contact her manager or the police if she felt unsafe at work, depending on the seriousness of the situation. The employer trained claimant about how to address noise disturbances in the hotel. Claimant could call the guests' rooms or the police. The employer did not require claimant to confront the guests directly. The supervisor told claimant that the hotel was not haunted, and that claimant would become accustomed over time to the hotel's noises.

(5) On September 14, 2013, claimant asked if the employer could move her to housekeeping or the day shift, so she did not have to work by herself. The employer did not have any open positions at that time.

(6) On September 14 and September 19, 2013, the employer scheduled claimant to work with another employee for training shifts. Claimant did not report to work on September 14, 2013. Claimant met with her supervisor on September 16, 2013, and quit.

(7) Claimant had attention deficit disorder (ADD) and an anxiety disorder. She did not tell her employer she had these medical conditions.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude 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 P2d 722 (2010). Claimant had ADD and an anxiety disorder, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with these impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

Claimant quit work, in part, because she would not be relieved of her work duties during her rest and meal periods once she began working as the night auditor. It was undisputed that the employer required its night auditor, who worked alone, to remain on duty during rest and meal periods. Ordinarily, Oregon law requires employers to relieve employees of all duties during the meal period. OAR 839-020-0050(2)(a). Under limited circumstances, the law allows an employee to perform duties during a meal period. OAR 839-020-0050(3). The record in this case does not show if those limited circumstances existed in this case. However, even assuming the employer was violating the law by not relieving claimant of her duties during her meal break, rather than quitting, a reasonable and prudent person with

the characteristics and qualities of an individual with ADD and an anxiety disorder would have complained to her supervisor, manager, or a higher level of management about the meal break policy before she quit. Because claimant did not complain about the policy, or show that it would have been futile to do so, claimant did not show that the alleged wage and hour violation likely would have continued, and that she had no reasonable alternative but to quit. Thus, to the extent claimant quit work due to the employer's break and meal period policy, she did not have good cause to quit when she did.

Claimant also quit work, in part, because she felt she would be unsafe working alone during the graveyard shift. Although, it was understandable that claimant would have some concerns about working alone at night, claimant did not show that her job would have been so dangerous that claimant had no reasonable alternative but to quit. Claimant discussed her safety concerns with the employer, and the employer offered claimant additional training, including safety training. A reasonable and prudent person with the characteristics and qualities of an individual with ADD and an anxiety disorder would have completed the training before quitting. Claimant failed to show that it would have been futile to complete the training, or to continue working, to see if she learned how to address different safety situations. To the extent claimant quit work due to safety concerns, claimant did not face a situation so grave that she had no reasonable alternative to quit.

We conclude that claimant did not have good cause to voluntarily leave work, and thus she does not qualify to receive unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 13-UI-07240 is affirmed.

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

**DATE of Service:** February 13, 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.