

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0138

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On September 30, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #135925). Claimant filed a timely request for hearing. On December 11, 2013, ALJ Lohr conducted a hearing, and on January 3, 2014 issued Hearing Decision 14-UI-07669, affirming the Department's decision. On January 22, 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 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Ram Transportation, Inc. employed claimant from March 31, 2011 to August 30, 2013 as a truck driver.

(2) The employer originally hired claimant to work with her husband to drive a flatbed truck it had leased from a third party. Most flatbed loads require a driver to use tarps and straps to secure the load. Claimant was unable drive a flatbed truck alone because she was unable to secure and release the loads. The tarps were too heavy for her to lift and throw. When she drove with her husband, claimant did half the driving, but her husband secured and released the loads. Claimant was able to drive a truck by herself if it did not require a tarp.

(3) On August 30, 2013, claimant's husband quit work to accept a job offer from another employer. Claimant also quit on August 30, 2013 because she was not able to tarp a flatbed truck by herself.

(4) The employer occasionally used driver teams, and had no-tarp loads. Claimant did not ask the employer if she could drive some of the no-tarp loads, or if there was another driver she could work with as a team driver.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit 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). 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.

Claimant quit work because she was unable to tarp a flatbed truck. Rather than quitting when she did, claimant had the option of asking the employer if she could drive no-tarp loads. Claimant testified that the employer gave no-tarp loads to another driver who was unable to tarp trucks, but the record does not show that the other employee was able to take all the no-tarp loads available. Transcript at 18 to 19. Thus, claimant did not show that such a request would have been futile. Claimant testified that the employer occasionally used team trucks. Transcript at 15. Claimant had the option of asking the employer if she could work with another driver as part of a driving team. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have pursued at least these two options before quitting work. Thus, claimant did not show by a preponderance of the evidence that she had good cause to quit, and is therefore disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-07669 is affirmed.

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

**DATE of Service:** February 20, 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.