

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0449

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #92658). Claimant filed a timely request for hearing. On March 4, 2014, ALJ Clink conducted a hearing, and on March 14, 2014 issued Hearing Decision 14-UI-12458, affirming the Department's decision. On March 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's 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 claimant 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) Asante employed claimant from July 28, 2008 to November 30, 2013 as a registered nurse. The employer operated a hospital.

(2) On November 15, 2013, the employer changed the way it staffed claimant's shift, the nursing shift from 7:00 p.m. to 7:00 a.m. The change resulted in the potential for claimant to have as many six patients under her care from 7:00 p.m. to 11:00 p.m. Prior to the change, claimant did not have more than five patients during that time.

(3) The change in patient assignment was recommended by the employer's charge nurses to improve continuity of care throughout the entire shift. The employer's staffing levels followed the employer's best practices for staffing, the recommendations of the Oregon Nurse Staffing Conference, and the industry standard of care.

(4) On November 15, 2013, claimant told the employer she would resign on November 30, 2013 because she considered the increased patient assignment to be unsafe and believed she would not have time to take a break during her shift.

(5) The employer's grievance policy states how and where an employee can file a grievance through the union. Claimant did not file a complaint with the employer or file a grievance through her union regarding her safety concerns. Claimant spoke with a human resources representative, who recommended she complain up the chain of command.

(6) Claimant was not assigned more than five patients from November 15 to November 30, 2013.

(7) On November 30, 2013 claimant resigned because the employer increased her potential patient assignment during part of her shift.

**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) (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 the employer changed its staffing matrix so claimant could potentially be assigned six patients for four hours during her twelve-hour shift. Claimant testified that she believed that would be unsafe for the patients, and prevent her from taking a break during that time. Transcript at 7 to 8. Claimant argued that she had difficulty caring for five patients, so would not be able to care for six patients. Transcript at 8. However, claimant worked for two weeks after the staffing changes took place, and had no assignments she considered to be unsafe. Transcript at 19. Nor does the record show claimant was unable to take her breaks. The employer's witness asserted that nurses would only be assigned six patients on the rare occasion that the hospital reached a maximum number of patients in claimant's unit, and that six patients per nurse was an acceptable number under the industry standard of care and the employer's "best practice" for staffing. Transcript at 29. The employer's witness testified further that the charge nurses made the change to provide safer patient care because the changes would improve continuity of care throughout the shift. Transcript at 29 to 30. The evidence as to how often claimant would have been assigned six patients, whether it would have been unsafe, and whether claimant would have been able to take her breaks, was, at best, equally balanced.

The employer's witness also testified that claimant could have complained to her supervisor, her supervisor's supervisor, the staffing committee, human resources, and the vice president of nursing. Transcript at 25. Claimant argued that complaining to the employer or the union would have been futile because she had requested repeatedly for three years that the employer train her as a charge nurse, and

the employer had not promoted her to a charge nurse position. Transcript at 40. Viewed objectively, claimant's reason for not complaining to the employer or her union regarding a safety issue, rather than a career issue, does not show that those options would have been futile.

In sum, claimant failed to show by a preponderance of the evidence that she would have missed her breaks or had unsafe working conditions if she continued working, and that complaining to the employer would have been futile. Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued working for her employer for an additional period of time. We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-12458 is affirmed.

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

**DATE of Service:** April 17, 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.