

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1088

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142231). Claimant filed a timely request for hearing. On June 2, 2014, ALJ Murdock conducted a hearing, and on June 5, 2014 issued Hearing Decision 14-UI-19023, affirming the Department's decision. On June 23, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. In his argument, claimant asserts the ALJ erred in excluding claimant's documentary evidence, which included photographs of his workstation and letters from coworkers corroborating claimant's testimony that they were unable to process surplus equipment because the surplus bins had been full. However, OAR 471-040-0025(5) states that irrelevant, immaterial or unduly repetitious evidence shall be excluded, and that erroneous rulings on evidence shall not preclude the ALJ from entering a decision unless shown to have substantially prejudiced the rights of a party. Claimant's documentary evidence was unduly repetitious of his sworn testimony about the events leading to his resignation. Portions of his documentary evidence relates to issues claimant did not raise at hearing as reasons he left work. Those portions are irrelevant. The ALJ therefore did not err in excluding the documentary evidence. Additionally, the ALJ allowed claimant an opportunity to add or read information from the documents into the record, and claimant chose not to do so. The employer did not dispute claimant's testimony about the nature of the surplus equipment problem. Thus, even had the ALJ erred in excluding claimant's documentary evidence, claimant failed to show the error substantially prejudiced his rights.

We considered claimant's written argument and the entire hearing record when making this

**FINDINGS OF FACT:** (1) Corvallis School District #509J employed claimant from September 2, 2009 to April 14, 2014 as a computer lab technology assistant.

(2) Claimant's job duties included preparing surplus equipment for recycling by erasing software and personal information, and removing identifying marks from the equipment. After claimant prepared the equipment for recycling, technology technicians were supposed to remove the equipment from the employer's buildings to be processed for recycling. The only way to process the equipment during claimant's employment was by depositing it in recycling bins at the employer's district office.

(3) During all of the 2013-2014 academic year, the surplus bins at the employer's district office were full and unavailable for use to process surplus equipment. The technicians were unable to remove surplus equipment from claimant's work area, and staff continued to deposit additional equipment there. The stacks of surplus computer components, monitors, printers, and other office supplies in claimant's work area were unstable and sometimes seven feet high. Claimant frequently moved and restacked the equipment to make his work space safer, but was concerned the stacks would fall, especially if someone slammed a door, or there was an earthquake.

(4) From October 2013 until April 2014, claimant complained repeatedly about the stacks of surplus in his work area to the head administrator for the site where he worked, and the head administrator for claimant's department, technology services. The administrators told claimant they would address the problem, but did not do so before claimant quit work.

(5) Claimant reported his concerns to the OSHA (Oregon Occupational Safety and Health Division) safety committee members at the school where he worked. They did not address the problem.

(6) Claimant was not aware that he could complain to the union even if he was not a union member. Claimant did not contact human resources, the assistant superintendent, the superintendent or OSHA about his safety concerns.

(7) On April 14, 2014, claimant quit work because he was concerned about working in unsafe conditions.

**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 he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

Claimant quit work because the employer failed to correct the situation causing surplus computer equipment to accumulate in claimant's work area, which claimant believed posed a risk to his safety. Claimant complained about his working conditions to the building administrator for his worksite, the head administrator for his department, and the OSHA safety committee for his site. They did not

address his concerns adequately, and the situation persisted. However, although claimant pursued those alternatives before he quit, he failed to show that his concerns about his work area constituted a situation of such gravity that he had no reasonable alternative but to leave work when he did.

Claimant testified at hearing that he did not complain directly to OSHA, the superintendents, or human resources because he believed that it would have been improper to “go around” the site administrator and technology administrator, and that it was their responsibility to bring his concerns up the chain of command. Audio Record ~ to 32:11 to 33:38. Claimant argued in his written argument to EAB that he could not address the surplus equipment issue with the superintendent because it was the result of the superintendent’s own technology policies, and to raise the issue with the superintendent would have resulted in termination. Claimant Argument at 4. We are not persuaded that it was objectively reasonable for claimant to infer that the superintendent would not want to know about and correct the surplus equipment issue. Nor does the record show that complaining to human resources or the superintendent would have been futile. Even if claimant feared retaliation for complaining about his working conditions, the record does not show it would have been futile to complain rather than to resign. Moreover, the employer’s human resources representative testified at hearing that it had a grievance process claimant could have pursued or it could have referred claimant to the employer’s risk manager for assistance. Audio Record ~ to 26:14 to 26:36.

Claimant failed to show that his concerns about his working conditions were a situation of such gravity that he had no reasonable alternative to leaving work. Thus, claimant failed to show good cause for leaving work. He is disqualified from receiving unemployment insurance benefits on the basis of his work separation.

**DECISION:** Hearing Decision 14-UI-19023 is affirmed.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service:** July 24, 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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