

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1847

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 73336). Claimant filed a timely request for hearing. On November 20, 2014, ALJ Kirkwood conducted a hearing and issued Hearing Decision 14-UI-29071, affirming the Department's decision. On December 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. In her argument, claimant asked EAB to consider new information regarding her prospective child care expenses if she did not quit work, asserting that, at hearing, she did not expect, and was not prepared to answer, questions regarding her finances. Claimant further asserted that the estimates she gave regarding her prospective child care expenses were not accurate, and that her actual child care expenses would have exceeded \$1,000 per month.

OAR 471-041-0090(2) (October 29, 2006) states that EAB may consider new information when the party offering the information establishes that the new information is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. In this case, the record shows claimant knew that, at hearing, she would argue she quit work, in part, due to her prospective child care expenses if she continued working for the employer, and its effect on her finances. Audio Record at 9:20-11:15. It therefore was within claimant's reasonable control to expect and prepare to answer questions regarding her finances, including her prospective child care expenses if she did not quit work. In addition, as shown below in our analysis, claimant's assertion that her actual child expenses would have exceeded \$1,000 per month would not change our determination that claimant quit work without good cause. Claimant therefore failed to establish that factors or circumstances beyond her reasonable control prevented her from offering her new information into evidence at the hearing, or that the new

information is material to EAB's determination. Claimant's request for EAB to consider the new information therefore is denied.

**FINDINGS OF FACT:** (1) Peacehealth employed claimant as a certified medical assistant from July 18, 2003 to September 4, 2014.

(2) During the last two years of claimant's employment, she suffered from anxiety and depression, for which she was treated with medication.

(3) Prior to February 2014, claimant worked for the employer 28 hours per week. The employer paid claimant \$18 per hour. Claimant had approximately \$500 per month deducted from her gross wages for benefits. Claimant was married with two children, aged 3 and 6. She and her husband paid \$500 per month for childcare for both children. It cost claimant approximately \$40 per week to commute to and from work.

(4) In February 2014, claimant's manager began attempting to require claimant to work more hours. Claimant complained to the employer's human resources department, and was told that her manager could not require her to work more hours. Claimant's manager stopped attempting to require claimant to work more hours.

(5) In July 2014, however, the employer transferred claimant to a new department, and assigned her new job duties. The employer initially told claimant that it would honor her current work schedule. After approximately two weeks, however, the employer began requiring claimant to work more hours and different days. Claimant met with a nurse practitioner regarding the effect of the scheduling changes on her anxiety and depression. The nurse practitioner did not advise claimant to quit her job. Claimant did not inform the employer that the scheduling changes exacerbated her anxiety or depression.

(6) On August 1, 2014, the employer began requiring claimant to work Mondays through Thursdays from approximately 7:30 a.m. to approximately 5:00 p.m., 32 to 35 hours per week.

(7) In August 2014, however, claimant's child care provider told claimant she was retiring at the end of the month. Claimant and her husband searched for another child care provider, and determined that they would have to pay \$700 per month for child care for their younger child, and \$30 per day for after school care for their older child. They further determined that they would have to pay \$800 to \$1,000 per month for childcare for both children when their older child was not in school.

(8) Claimant quit work because the employer increased her hours, and due to the cost of child care if she continued working for the employer.

**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). Claimant suffered from anxiety and depression, permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant quit work, in part, because the employer increased her hours. However, claimant failed to show the employer was contractually or otherwise prohibited from increasing her hours, and an increase from 28 to between 32 and 35 hours per week was not unreasonable. Nor did claimant show that the changes in her work schedule exacerbated her anxiety or depression to such an extent that a reasonable and prudent person would have no reasonable alternative but to quit work, especially without allowing the employer reasonable opportunity to accommodate her mental health issues. Nor did claimant show that allowing the employer a reasonable opportunity to accommodate her mental health issues would have been futile. Absent such showings, claimant failed to establish that she had good cause to quit due to the changes in her work schedule.

Claimant also quit work due to the cost of child care if she continued working for the employer. However, claimant was earning a minimum of approximately \$1,996 per month working for the employer, even after having \$500 per month deducted from her gross wages for benefits.<sup>1</sup> It cost claimant approximately \$173.33 per month to commute to and from work.<sup>2</sup> Claimant’s prospective child care expenses were, at most, \$1,220 per month.<sup>3</sup> Thus, although claimant’s prospective child care expenses exceeded \$1,000 per month, the cost of continuing to work for the employer (\$1,393.33<sup>4</sup>) would not have exceeded the remuneration she received (\$1,996), even after having \$500 deducted from her gross wages for benefits. Absent a showing that the cost of working for the employer would have exceeded the remuneration she received, claimant failed to establish that she had good cause to quit due to the cost of child care if she continued working for the employer.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 14-UI-29071 is affirmed.

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

**DATE of Service: January 15, 2015**

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<sup>1</sup> \$18/hour x 32 hours/week x 52 weeks/year / 12 months/year - \$500 = \$1,996.

<sup>2</sup> \$40/week x 52 weeks/year / 12 months = \$173.33.

<sup>3</sup> \$30/day x 4 days/week x 52 weeks/year / 12 months/year + \$700 = \$1,220.

<sup>4</sup> \$1,220 + \$173.33 = \$1393.33.

**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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