

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0028

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73445). Claimant filed a timely request for hearing. On December 23, 2014, ALJ Murdock conducted a hearing, and on December 30, 2014, issued Hearing Decision 14-UI-31042, affirming the administrative decision. On January 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument to the extent that it was relevant and based on the hearing record.

**FINDINGS OF FACT:** (1) NVHG employed claimant from June 19, 2013 through October 22, 2014, last as the spa supervisor.

(2) In approximately March 2014, claimant became dissatisfied with the amount and nature of the work she believed the employer expected her to perform. Claimant believed that she was required to perform the duties of both a spa supervisor and spa manager, and found it impossible to complete all her work within a 40 hour work week. The employer did not permit claimant to work overtime, but the general manager attempted to work with claimant to provide her with resources to help her on the job. Claimant was frustrated with these efforts, and believed they did little to reduce her work load. The employer never admonished or disciplined claimant for failure to perform her job duties.

(3) On October 9, 2014, claimant sent the general manager a text in which she asked if he had talked to his supervisor regarding claimant's request for help. The general manager responded that he had not been able to resolve claimant's problem.

(4) On October 10, 2014, claimant sent a text to the general manager in which she stated "I quit." (Audio at 7:25). Soon after sending this text, claimant contacted the general manager and said that she had announced her resignation in a moment of frustration, and was willing to continue working until the

employer hired someone to replace her. Neither claimant nor the general manager discussed a specific date on which claimant would leave work. (Audio at 9:18).

(5) On October 14, 2014, the employer's spa director met with the spa therapists to discuss claimant's departure and to plan the process of transitioning to a new spa supervisor. Claimant was not invited to and was unaware of this meeting.

(6) On October 15, 2014, the spa director contacted claimant, told her about the meeting with the therapists, and said he wanted to meet with claimant to discuss the transition to a new spa supervisor.

(7) Between October 10 and October 22, 2014, claimant worked several shifts.

(8) On October 22, 2014, claimant sent the spa director a text in which she stated that she was quitting. (Audio at 11:00). Claimant quit because she believed her work environment was hostile on account of the employer's failure to specify a date when she would stop working, the employer's inability to address her concerns about an excessive work load, and the employer's failure to include her in the October 14 meeting with the spa therapists. After sending the spa director the text in which she announced she was quitting, claimant met with the spa director. At that meeting, the spa director told claimant that it would take a minimum of two to four weeks to hire her replacement and that claimant was welcome to work for the employer in a front desk position during the time it took to hire her replacement. (Audio at 37:57).

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

We first consider the nature of claimant's work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant asserted that she did not quit her job, and "[t]he only reason I did not continue employment with NVHG is a decision made on their part to replace me." (Claimant's Written Argument). The spa director, however, testified that when he met with claimant on October 22, 2014, after she had sent a text in which she announced she was quitting her job as spa supervisor, he told claimant that she could work for the employer in a front desk position during the period of time it took to find a replacement for her. Because the employer had continuing work available for claimant and she chose not to accept it, claimant's work separation was a voluntary leaving.

Because we conclude that claimant voluntarily left her job, we now consider whether she is qualified to receive unemployment benefits on the basis of this work separation. 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). 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 she employer for an additional period of time.

Claimant contended that she left work because of a hostile work environment, caused by overwork, the employer's failure to specify a date on which she was expected to stop work, and the employer's actions in excluding her from an October 14 meeting with the spa therapists. Claimant failed to prove that any of these reasons was a reason of such gravity that a reasonable and prudent person would have no alternative but to leave work. In regard to her workload, claimant provided no specific information regarding the number of hours she was expected to work, did not prove that she experienced emotional or physical stress because of the amount of work the employer expected her to perform, and did not demonstrate that the employer disciplined or admonished her for an inability to complete her assigned tasks. Claimant thus failed to prove that her workload was so excessive as to create a grave situation for her.

Although claimant, as the spa supervisor, may have been understandably upset by her exclusion from the October 14 meeting the spa director held with employees claimant had been supervising, she had the reasonable alternative of discussing the meeting with the spa director, expressing her concerns about her exclusion, and even requesting that she be given an opportunity to meet with the spa therapists, if claimant believed it was important to do so. Finally, in regard to the employer's failure to provide claimant with a specific date on which she was expected to leave her job, claimant had the reasonable alternative of talking with the employer to attempt to agree upon such a date. The record is devoid of any evidence that claimant ever attempted to have this discussion with the spa director before submitting her resignation on October 22, 2014.

For the above reasons, claimant thus failed to demonstrate that she had good cause to quit her job. She is disqualified from receipt of unemployment benefits.

**DECISION:** Hearing Decision 14-UI-31042 is affirmed.

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

**DATE of Service:** February 25, 2015

**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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