

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0090**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 135437). Claimant filed a timely request for hearing. On January 13, 2015, ALJ S. Lee conducted a hearing, and on January 14, 2015, issued Hearing Decision 15-UI-31847, affirming the administrative decision. On February 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The Lake Wound Clinic employed claimant October 29, 2009 until October 18, 2014, last as clinic manager.

(2) In 2009, the doctor who owned the clinic hired claimant to work two days a week; claimant was paid \$100 for each day she worked. Claimant had previously volunteered her services to the clinic. In 2010, the doctor agreed to increase claimant's hours to full time, pay her a salary of \$25,000 per year, and pay for claimant's internet service and cellular phone.

(3) In 2011, the doctor began providing claimant with health insurance, and paid the full cost of claimant's premiums.

(4) In August 2014, claimant took four days off to spend time with visiting family members.

(5) In late August 2014, the doctor wrote claimant and told her that it appeared that claimant was no longer working on Wednesday, Thursday and Friday afternoons, and that it was clear that claimant preferred a part-time position. The doctor offered claimant a position working Tuesday and Saturday, for 10 hours each day, at a wage of \$15 per hour. The doctor also told claimant that the employer would

no longer pay for claimant's health insurance, internet service, and cell phone. Transcript at 13-14 and 19-21.

(6) On September 1, 2014, claimant began working for the employer on Tuesday and Saturday, 7 hours each day, at a wage of \$15 per hour. The doctor paid claimant daily by check, rather than using a payroll service to issue claimant's checks as she had done prior to September 1.

(7) Claimant never spoke to the doctor about the reduction in her hours and change in her wages until October 18, 2014, when she questioned the doctor about her pay and also questioned the doctor's treatment of a patient. The doctor told claimant that if she was not happy, she was free to go. Transcript at 6.

(8) On October 20, 2014, claimant called the doctor and told her that she "couldn't make it on what she was getting paid," that she would not be returning to work, and that she would come to the office on October 21 to turn in her key, remove her personal belongings, and pick up her paycheck. Transcript at 22.

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

At the hearing, claimant asserted that she was discharged by the doctor on October 18, when the doctor told her that she could leave if she was unhappy with her job. The doctor contended that claimant chose to voluntarily leave work. We thus begin by determining the nature of the 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).

The doctor's October 18 remark to claimant indicates the doctor's acknowledgement that claimant was unhappy with the reduction in hours and the doctor's medical decision rather than an unwillingness to continue employing claimant. Neither this comment nor any other evidence in the record causes us to doubt the doctor's assertion that she had no desire to terminate claimant's employment when she spoke to claimant on October 18. Transcript at 23. Because continuing work with the employer was available to claimant after October 18 that claimant chose not to accept, we conclude that claimant voluntarily quit her job.

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).

Claimant quit her job because she was upset about the reduction in her work hours and the accompanying reduction in earnings. Under OAR 471-030-0038(5)(e), an individual who leaves work due to reduction in hours has left work without good cause “unless continuing to work [for the employer] substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” Claimant provided no evidence or testimony that working part-time for the employer interfered in any way with a return to full time work. Although claimant asserted that she “couldn’t get by on what she was paid,” she offered no evidence that the cost of her part time work exceeded her earnings. Claimant therefore failed to meet her burden to demonstrate good cause for quitting her job.

Claimant contends, however, that the doctor did not reduce her work hours on September 1; according to claimant, she and the doctor agreed in 2010 that claimant would work 20 hours a week for an annual salary of \$25,000. Claimant contended that in spite of this agreement, she worked full time for the employer from 2010 until September 1, 2014. Claimant asserted that she never complained to the doctor about her work hours because she did not want to jeopardize her job by angering the doctor, whom she believed had a bad temper. Transcript at 9 and 10. In support of her assertion, claimant testified that her paychecks prior to September 1, 2014 showed that each two week period, she was paid for 40 hours of work. Transcript at 31. It is implausible that claimant remained in a job for four years in which she worked twice as many hours as she was told she would be working, and never questioned her employer about the situation. Claimant’s incorrect paychecks appear to be the result of an error of which the doctor was unaware, since the checks were issued by a payroll service and never reviewed by the doctor. Claimant’s contention that prior to September 1, 2014, she was paid for part time work is therefore not credible.

Even if we accepted claimant’s contention that she was paid only for part time work prior to September 1, 2014, and that the doctor’s actions on that date therefore resulted in a substantial reduction in her wages, we would still conclude that claimant did not demonstrate good cause to quit her job. It does not appear that the loss of pay and benefits, while undoubtedly upsetting, constituted a grave situation. Claimant readily accepted the doctor’s offer to work two days a week without questioning or protesting the action; she even chose to work fewer hours than the doctor was willing to schedule her. Although the doctor implemented the salary reduction on September 1, claimant did not quit until over a month and one-half later, on October 21. Claimant also had the reasonable alternative of asking the doctor to reverse the decision to change her work schedule by explaining that she had only taken a few days off in August and was willing to work the hours the doctor expected her to work. The doctor testified that she would have considered such a request. Transcript at 23. Claimant thus failed to demonstrate that a salary reduction constituted a situation so grave that a reasonable and prudent person would have no alternative but to leave work when she did.

Claimant failed to demonstrate good cause for voluntarily leaving her job under OAR 471-030-0038(5)(e) and is disqualified from receiving benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-31847 is affirmed.

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

**DATE of Service: March 19, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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