

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0196**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 14, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct within 15 days of a planned voluntary leaving without good cause (decision # 121115). Claimant filed a timely request for hearing. On February 3, 2015, ALJ Seideman conducted a hearing and issued Hearing Decision 15-UI-33055, concluding claimant voluntarily left work without good cause. On February 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) YMCA of Columbia Willamette employed claimant as a part-time “floater” teacher in its on-site day care facility from March 5, 2014 to October 13, 2014. Audio Record ~ 12:30 to 12:45. Claimant’s job was to cover for approximately 15 day care teachers when they took 10 minute breaks and lunch breaks.

(2) While working for the employer, claimant suffered a torn meniscus in her knee. She eventually was cleared by her physician to return to light duty work and returned to work for the employer in late summer. Although the employer accommodated claimant’s work limitations, claimant concluded the frequent knee bending required to care for small children at the employer’s facility was too hard on her knee. She decided to pursue self-employment as a day care provider in her own home where she could control the environment, resulting in less knee bending.

(3) On or about September 26, 2014, claimant received a commitment and deposit from a family to utilize her to provide day care for three young children, beginning October 13, 2014. That same day she gave the employer two weeks’ notice that she intended to quit on October 10, 2014.

(4) On Monday October 6, claimant took the day off because her knee was causing her significant pain. On October 7, 2014, claimant struggled with her knee condition while at work and met with the employer’s program manager (Starr). She became very emotional during the meeting and told Starr her

condition made it “difficult” for her to work at the employer’s facility. After further discussion, which included Starr’s offer to pay claimant her wages through her notice period, they mutually agreed it was “probably better if [claimant did not] finish her time out.” Audio Record ~ 37:15 to 38:30. Claimant’s last day of work was October 7, although continuing work was available.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant voluntarily left work without good cause.

There is no dispute that claimant resigned to pursue self-employment as a day care provider in her own home and gave the employer two weeks’ notice of her intent to quit. At issue is whether the actual work separation on October 7 was a discharge or voluntary leaving. However, claimant did not dispute that she agreed to end the employment before the end of her two week notice period after Starr told her the employer intended to pay her for the entire two weeks. Viewing the record as a whole, the actual work separation on or about October 7 also was a voluntary leaving. *See, J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (claimant’s work separation was a voluntary leaving, where he gave notice of his intent to quit work, but later agreed to his supervisor’s suggestion to accelerate the separation date); *Smith v. Employment Division*, 34 Or App 623, 627, 579 P2d 310 (1978) (claimant’s work separation was a voluntary leaving, where she gave notice of her intent to quit work, and agreed with her employer on a mutually acceptable separation date).

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of 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). Claimant quit work to pursue self-employment as an in-home day care provider. OAR 471-030-0038(5)(b)(G) specifically provides that for purposes of ORS 657.176(2)(c), leaving work for self-employment is without good cause. Accordingly, claimant is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 15-UI-33055 is affirmed.

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

**DATE of Service:** April 10, 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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