

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0271**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95497). The employer filed a timely request for hearing. On March 4, 2015, ALJ Kirkwood conducted a hearing, and on March 5, 2015 issued Hearing Decision 15-UIB-34550, reversing the Department's decision. On March 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) St. Mary's Home for Boys, Inc. employed claimant as a residential counselor from August 26, 2013 until December 27, 2014. Claimant worked in one of the cottages to which the employer's residents were assigned.

(2) The employer operates a residential facility for juvenile males placed in the custody of the Oregon Youth Authority (OYA) or the Oregon Department of Human Services (DHS). On occasion, these boys are hostile and engage in physically aggressive behavior. The employer recognized common repair tools could be used as weapons and kept secured the inventory of tools that it allowed the boys to use on its premises. The employer monitored the location of all tools by requiring the boys to check them out and to check them back in to the inventory.

(3) To ensure the safety of the boys residing in the facility and all staff, the employer held meetings twice each day, once in the morning and once in the evening, to review significant incidents and developments at the facility during the prior shift and to allow the exchange of information about them among staff and between staff and management. The employer also had a safety committee that met each month to review incidents that resulted in injury to the boys or to staff in the facility.

(4) On October 18, 2014, claimant sustained an injury to his lower back at work. The employer's human resources manager worked with the State Accident Insurance Fund (SAIF) and claimant's physician to

design a modified work agreement that allowed claimant to return to light duty work. On November 24, 2014, the human resources manager sent claimant a letter outlining his modified work assignment and his work restrictions. Exhibit 2 at 9-11; Transcript at 43.

(5) Before December 27, 2014, claimant did not tell the manager of his unit, the human resources manager or the employer's assistant director that he thought some of the work activities he was expected to perform violated the restrictions set out in the November 24, 2014 letter or the modified work agreement. Nor did claimant tell any of these people that he feared for his safety when working in the facility or that he thought the facility was not adequately protecting him or other staff members.

(6) Early in the morning on Saturday, December 27, 2014, at 3:40 a.m., claimant sent an email to the employer's human resources manager stating that he thought some of the work he was being asked to perform violated the restrictions in his modified work agreement. Claimant did not mention any safety concerns in that email. The human resources manager did not work on the weekend and she did not access claimant's email until she returned to work on Monday, December 29, 2014. Approximately eleven hours later, at 9:31 p.m. on December 27, 2014, claimant sent an email to the human resources manager attaching a letter which stated that he was resigning effective immediately and that he had given a hard copy of his resignation letter to his managers at the worksite. Exhibit 2 at 20. The resignation letter stated that he was resigning as a result of the employer's failure to provide a "safe, secure and dignified work space for residential counselor." Exhibit 2 at 21.

**CONCLUSIONS AND REASONS:** 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 testified that one reason he decided to leave work on December 27, 2014 was because the assistant manager of the cottage found a full size screw driver in the common living room on December 26 or 27, 2014 and the employer's management did not take appropriate safety precautions after its discovery was reported. Transcript at 7. Claimant's contention that the assistant manager took no action other than to place the screw driver on a counter in the staff office, to which the resident boys might have had access, is implausible. If a potential weapon had actually been discovered in the facility, and the residents were as unruly as claimant suggested, it is unlikely that the assistant manager or other staff who were aware of its discovery would have been so indifferent the danger that it imposed that they would have simply "joked" about it and left it out in the open for anyone to pick up. Transcript at 8. Claimant did not attempt to rebut the testimony of the employer's witnesses that the discovery of an unsecured screw driver was not reported in any of the daily facility review meetings during December 2014, as would be expected if a potential weapon were discovered. Transcript at 17. If claimant was troubled by the assistant manager's inaction toward the discovery of a safety hazard of the magnitude of

an unaccounted for full-size screw driver, it is highly unlikely that he would not have reported his alleged safety concerns to the weekend manager, the unit manager, the facility's assistant director or anyone else, which he did not contend that he did. Transcript at 9, 18, 20, 23, 29-30. Finally, although claimant had already resigned, the employer nevertheless took the allegation about the screw driver seriously and investigated. The employer was unable to locate a screw driver in the inventory of the cottage's tools or on the premises of the cottage other than for a tiny screw driver that a resident had permission to keep for repairing his skateboard. Transcript at 14. In sum, the steps that claimant did not take, and the steps that the employer did take with no discovery of a full-size screw driver suggest, more likely than not, that the incident involving the full-size screw driver did not actually occur. However, even if it did, a reasonable and prudent residential counselor would not have quit when claimant did before raising his allegedly unaddressed safety concerns with the employer's management and determining that they refused to take any actions to deal appropriately with them. Absent this showing, claimant did not take the actions of a reasonable and prudent person to avoid leaving work.

Claimant also contended that he quit work because the weekend manager of the cottage in which he worked was consistently assigning work to him that violated his work restrictions. Transcript at 5, 7, 8, 9. However, based on claimant's testimony and that of the employer's witnesses it appeared, at worst, that the work that violated his restrictions arose unexpectedly after he was already involved in performing an assignment that was not initially expected to exceed his light duty restrictions. Transcript at 19, 25, 27, 28, 36, 41-42. Until December 27, 2014, claimant did not attempt to contact the unit manager, the cottage assistant manager, the human resources director (who had designed the modified work plan), or the assistant director to inform them that the restrictions of his modified work plan were being either inadvertently or purposefully exceeded. Transcript at 10, 11, 19, 28, 29-30, 33. A reasonable and prudent residential counselor, who wanted to maintain his employment, would not have quit work when limited aspects of his assigned work unexpectedly exceeded his work restrictions without informing his upper managers, one of whom had formulated the work plan, of these violations and allowing them to reformulate that plan to avoid future violations. Absent pursuing this alternative, claimant did not take the actions of a reasonable and prudent person to avoid leaving work.

Claimant did not show that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-34550 is affirmed.

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

**DATE of Service:** April 28, 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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