

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0528**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 141638). Claimant filed a timely request for hearing. On April 21, 2015, ALJ S. Lee conducted a hearing, and on April 28, 2015 issued Hearing Decision 15-UI-37608, affirming the Department's decision. On May 5, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2).

**FINDINGS OF FACT:** (1) TRG Customer Solutions, dba IBEX Global, employed claimant, last as a technical advisor, from November 13, 2013 to February 26, 2015.

(2) Prior to the end of her employment, claimant suffered from an unspecified physical or mental condition. Her condition had qualified her for intermittent protected leave under the federal Family and Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA). During the month of February 2015, claimant missed substantial work time due to illness and variously reported her absences as regular sick leave under the employer's sick leave policy, FMLA leave or OFLA leave, in order to maximize her sick leave protection. During February the employer provided her with additional FMLA paperwork for her physician to complete and gave her a deadline of February 25, 2015 to submit it.

(3) Claimant was unable to submit the completed paperwork until February 26, 2015 because of delay caused by her physician's office. On that day, she brought the paperwork to the employer's Human

Resources office, and while waiting in a waiting room to meet with a specific HR representative, overheard her team manager and the representative loudly discuss her absences and the way she had reported them through a closed door. She heard the word “fired” several times, but did not know if it was the word was used because of the extent of her absences, the way she had called them in or because she had missed the paperwork deadline. Claimant became upset, left the completed FMLA paperwork with the human resource representative’s assistant and left the office. Later that day, after she decided she would rather quit than be “fired”, she left a message with both her department and the human resource representative that she was quitting. Shortly after she left this message, the human resource representative left claimant a message to call her back because she understood there may have been “an issue” claimant wanted to discuss with the human relations manager. Claimant chose not to return her call, however, because she believed she had already quit. Audio Record ~ 18:30 to 19:00.

(4) Before she notified the employer she was quitting on February 26, claimant did not speak to her team leader, the operation’s manager or anyone connected with the employer about the cause of her paperwork delay or her belief that she should not have been discharged due to her absences or inability to timely submit her paperwork.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). Prior to her work separation, claimant had qualified for intermittent FMLA and OFLA leave based on one or more unspecified physical or mental conditions and so we assume, without deciding, that one or more of those conditions constituted a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with such 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 the employer for an additional period of time.

Claimant quit when she did because she believed she was about to be “fired” due to the extent of her absences, the way she had called them in or because she had missed a deadline to submit her FMLA paperwork and believed it would be better for her to quit her job rather than be “fired” from it. However, before quitting, claimant did not speak with her team manager, any other supervisor or the human resources office even though she believed she should not have been subject to termination due to her absences, most of which were protected under FMLA or OFLA, or the short (one day) delay in submitting her paperwork. When the human resources representative contacted claimant soon after she quit, claimant did not return the call even though she understood that that the representative wanted to talk with claimant about any “issue” claimant may have had regarding her circumstances. Claimant failed to show that taking any one of those objectively reasonable actions were futile alternatives to permanently severing her employment relationship when she did. She also failed to show that no reasonable and prudent person with the characteristics and qualities of an individual with her impairment

would have availed herself of those options and continued to work for the employer for at least some additional period of time.

Moreover, on this record, even if claimant was about to be discharged for any one of the reasons she speculated, her potential discharge would not have been for misconduct, because there was no evidence she was consciously indifferent to the employer's expectations.<sup>1</sup> We have consistently held that individuals who quit work to avoid an immediate or imminent discharge, when the discharge would not have been for misconduct, and the only issue remaining was to negotiate advantageous separation terms, have quit work for good cause.<sup>2</sup> However, this case is distinguishable. Viewed objectively, claimant's discharge was not inevitable, nor would it have been immediate. And, claimant did not assert or show that being discharged would have been a particularly onerous burden, either specifically for herself or generally for individuals in her profession. Claimant did not specify any reason why the possibility of being discharged for any of the reasons given was such a grave situation that no similarly situated reasonable and prudent person with the characteristics and qualities of claimant's impairment would have continued working for the employer for an additional period of time and done the best they could under the circumstances alleged.

Because claimant had reasonable alternatives to leaving work when she did, claimant failed to show that the reason or reasons that prompted her decision to leave work constituted good cause under ORS 657.176(2)(c). Accordingly, claimant is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 15-UI-37608 is affirmed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, *pro tempore*, not participating.

**DATE of Service:** June 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

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<sup>1</sup> Because this record does not show that claimant's potential discharge would have been for misconduct, OAR 471-030-0038(5)(b)(F) does not apply.

<sup>2</sup> See *David J. Schalock* (Employment Appeals Board, 12-AB-2919, November 15, 2012) (remand to determine whether claimant's potential discharge was for misconduct, and whether he had good cause to quit to avoid being discharged, not for misconduct, when his immediate work separation was assured and the only thing left was to negotiate how the separation would be characterized by the employer to prospective employers); *Thomas R. Bailey* (Employment Appeals Board, 12-AB-1609, June 27, 2012) (claimant had good cause to quit to avoid being discharged, not for misconduct, when his discharge was assured and he had reason to believe it would look better on his employment record if he quit instead); *Donna Zelinski* (Employment Appeals Board, 12-AB-0436, March 16, 2012) (claimant had good cause to quit to avoid being discharged, not for misconduct, and receive a severance package); *Timothy E. Case* (Employment Appeals Board, 11-AB-3571, February 3, 2012) (claimant had good cause to quit to avoid being discharged, not for misconduct, and receive a monetary settlement); compare *Melody G. Zehner* (Employment Appeals Board, 12-AB-2831, November 16, 2012) (claimant did not have good cause to quit work when her discharge was not assured and did not specify particular concerns about the stigma of a discharge on her future employability).

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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