

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0635**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 134316). Claimant filed a timely request for hearing. On May 4, 2015, ALJ Vincent conducted a hearing, and on May 12, 2015, issued Hearing Decision 15-UI-38337, affirming the Department's decision. On May 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**EVIDENTIARY MATTER:** Claimant offered two exhibits into evidence at the outset hearing and the ALJ admitted portions of each without marking either exhibit. Accordingly, the exhibits identified by the ALJ as Exhibits 1 and 2 have been marked as Exhibits 1 and 2 and are admitted into the record. Any party that objects to the admission of Exhibits 1 and 2, so marked, into the record must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090. Unless such objection is received and sustained, the exhibits will remain in the record.

**FINDINGS OF FACT:** (1) ShelterCare, a private agency that provided residential and support services to disadvantaged people, employed claimant as a cook from August 16, 2012 to February 23, 2015.

(2) The employer had a grievance procedure for employees to follow whenever an employee objected to an employer action. Under the procedure, the employer was expected to contact the employer's human resources department and report the employee's complaint. The human resources department would

then prepare paperwork reflecting the grievance, investigate the action complained of, and resolve the complaint. Claimant was aware of the employer's grievance procedure.

(3) On February 17, 2015, claimant was working in the employer's kitchen. A staff counselor authorized a resident under her supervision to enter a kitchen storeroom, where unsecured knives were kept, and make herself a sandwich while the resident was out of the counselor's field of vision. Claimant loudly voiced her objection to the counselor because she believed the counselor's actions violated employer policy, exposed claimant to possible danger, and created more work for her cleaning up after the resident. That afternoon, claimant attended a leadership meeting and reported the incident to the employer. Rather than address claimant's safety concerns, the employer criticized claimant for raising her voice at the resident and counselor, who had obtained prior authorization to allow the resident to make a sandwich in the kitchen.

(4) On February 23, 2015, the employer gave claimant two written warnings: one for disrespectful conduct toward the counselor on February 17, and another for disrespectful conduct toward another resident on a different day. Claimant became upset over the warnings she believed were unjustified and decided to quit because of the warnings, her concern for her personal safety, and a disagreement with the employer over a change in her work hours.

(5) Prior to quitting, claimant did not contact the employer's human resources department about filing a grievance about the warnings she received, her safety concerns, or the change in her work hours. She filed a grievance after she quit, but it was dismissed by the employer because she was no longer an employee.

**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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time.

Claimant quit work because of the warnings she received on February 23, 2015, her concern for her own safety in the kitchen, and the change in work hours she received without notice shortly before February 23. Claimant believed the warning concerning her February 17, 2015 conduct was unjustified because it ignored the counselor's poor supervision of the resident and resulting safety concern that precipitated her outburst. Claimant believed the warning concerning her other alleged conduct was unjustified because the alleged conduct was fabricated. She also believed her hours had been unfairly changed because the change occurred without any prior discussion or notice. However, claimant did not dispute that she was aware of the employer's grievance procedure and, in fact, utilized the procedure after she quit. Although she asserted she brought her safety concern to the leadership meeting on February 17,

she did not assert or show that a member of the human resources department attended that meeting or that her other concerns were ever discussed with anyone in that department prior to February 23. Under the circumstances, claimant failed to show that her concerns over her safety, unfair warnings and hours constituted reasons of such gravity that a reasonable and prudent cook of normal sensitivity, exercising ordinary common sense in her circumstances and interested in maintaining her employment, would conclude she had no reasonable alternative but to leave work when she did and become unemployed before exercising her right as an employee to file a grievance and have her concerns fully aired and investigated.

Claimant had the burden to show that she quit work when she did with good cause as defined under OAR 471-030-0038(4). Claimant failed to meet her burden and 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-38337 is affirmed.

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

**DATE of Service:** July 27, 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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