

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0637**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 7, 2015 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 38252). Claimant filed a timely request for hearing. On May 1, 2015, ALJ Shoemake conducted a hearing, and on May 11, 2015 issued Hearing Decision 15-UI-38252, affirming the Department's decision. On June 1, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she offered information and copy of an email that she did not present at the hearing. Claimant did not explain why she did not offer this information or this document at the hearing and otherwise did not show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider the new information that claimant sought to present. EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Postal Express, Inc. employed claimant as a part-time worker in its warehouse from July 21, 2014 until December 5, 2014. The employer also employed claimant's husband, who was claimant's workplace supervisor.

(2) Sometime before December 2, 2014, the employer decided to restructure its operations and intended to eliminate various positions, including all part-time positions in its warehouse. The employer wanted to implement these changes effective December 15, 2014.

(3) On Tuesday, December 2, 2014, the employer gave to claimant's husband, as her supervisor, a written proposal to continue claimant's employment in a full-time capacity. The proposal notified claimant that her part-time position would be eliminated as of December 5, 2014. It asked claimant either to accept or decline the employer's offer of full-time work by December 3, 2014 and, if she accepted it, to mark the full-time shift she preferred. The proposal instructed claimant to sign and return it to the employer's human resources department by the start of her shift on December 3, 2014. Exhibit

2 at 1. The human resources department did not receive the employer's proposal back from claimant on December 3, 2014 or at any time after.

(4) On December 5, 2014, during claimant's shift, one of the employer's supervisors told claimant's husband and her immediate supervisor that he wanted to meet with claimant. The employer's supervisor met with claimant. Although the December 3, 2014 deadline for returning the signed proposal had already expired, the supervisor told claimant that she needed to make a decision during that meeting about whether she was going to accept or decline the employer's offer to continue her employment in a full-time capacity and to sign the employer's proposal indicating her choice. Claimant refused to complete the proposal or to sign it. The supervisor immediately placed claimant on administrative leave and sent her home until the employer decided how to proceed in light of claimant's refusal.

(5) On December 8, 2014, the employer gave claimant's husband a letter to deliver to her stating that a work separation had occurred as of December 5, 2014 when her part-time position was eliminated and she had failed to accept the full-time position offered. Exhibit 1 at 1.

(6) Between March 5, 2015 and April 13, 2015, claimant had several conversations with a Department representative about her work separation from the employer. In those conversations, claimant stated that the employer had eliminated her part-time position. The authorized representative understood her to state that, on December 5, 2014, she was aware that that the employer's supervisor was willing to allow her to continue working for the employer if she was willing to sign the employer's proposal and to accept full-time work. Audio at ~ 36:40, ~44:23, ~45:28.

**CONCLUSIONS AND REASONS.** Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's work separation. The employer's witness and the Department's witness contended that claimant voluntarily left work when she refused to sign the employer's proposal for continued employment in a full-time capacity after her part-time position was eliminated. Audio at ~ 27:25, ~29:45, ~30:20, ~38:55. However, claimant contended that the employer's supervisor discharged or laid her off when he sent her home after she refused to sign the employer's offer of full-time employment in lieu of her part-time position. Audio at ~11:20, ~14:03, ~15:41. The applicable regulation states that, if at the time of the work separation, claimant could have continued to work for the employer for an additional period of time the separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to work for the employer for an additional period of time, but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Claimant asserted generally throughout the hearing that she did not sign the employer's proposal to continue her employment when the employer's supervisor presented it on December 5, 2014 because she did not understand what was happening, she had never seen the proposal, she did not know what it said and the supervisor wanted her to sign a blank sheet of paper. This account is unlikely, however. Audio at ~ 13:40, ~45:32. There is no discernable reason, and it makes no sense, that the supervisor would ask claimant to sign a blank piece of paper in lieu of signing the actual proposal. Moreover, at various points in her testimony, claimant contradicted her earlier testimony and stated that the supervisor told her on December 5, 2014 he was offering her full-time hours and that she needed to sign the document he was presenting in order to remain employed on a full-time basis after her part-time position

was eliminated. Audio at ~ 13:36, ~45:40. On balance it appears, most likely, that on December 5, 2014 claimant knew at least the general content of the employer's proposal and, for reasons that are not clear, refused to sign it on that day. Because the employer was willing to allow claimant to continue working after December 5, 2014 if she signed it, claimant's refusal to sign evidenced her unwillingness to continue to work for the employer. Claimant's work separation was a voluntary leaving of work on December 5, 2014, when she refused to sign the proposal that would have preserved her employment with the employer.

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) (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 her employer for an additional period of time.

Because claimant contended that the employer laid her off or discharged her, she did not present any reasons for leaving work. We infer that the reasons claimant cited for refusing to sign the paper presented to her by the employer on December 5, 2014, which led to our conclusion that she voluntarily left work, were the same reasons that she quit work. Although claimant testified that she refused to sign that paper because she did not understand the employer's proposal, and the supervisor refused to allow her to read the proposal and demanded that she sign a blank sheet of paper, that testimony was illogical and belied common sense for the reasons discussed above. Claimant provided no plausible or compelling reasons for her refusal to sign the proposal that the supervisor presented to her, let alone a grave reason from which she had no alternative but to leave work.

Claimant did not show that objectively grave reasons motivated her to leave work, and therefore did not show that she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-38252 is affirmed.

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

**DATE of Service: July 24, 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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