

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0770**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 123349). Claimant filed a timely request for hearing. On June 17, 2015, ALJ R. Davis conducted a hearing, and on June 19, 2015 issued Hearing Decision 15-UI-40376, affirming the Department's decision. On June 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) The Oregon Youth Authority employed claimant as an office specialist 2 from July 16, 2014 to April 17, 2015.

(2) On April 1, 2015, the employer suspended claimant pending investigation of her use of coarse language in front of inmates. Claimant did not believe that any inmates had been around when she used coarse language. During her suspension, the employer interviewed claimant by phone about her contact with a former inmate to whom she had agreed to provide a reference, which she believed was common practice.

(3) On April 17, 2015, claimant's union representative told claimant that the employer was going to discharge her unless and entered into an agreement with the employer to resign in lieu of discharge. The union representative told claimant that regardless whether she agreed to quit, that would be her last day of work. Claimant was concerned about the effect being discharged would have on her future employability due to the specialized nature of the work she did, and the small community in which she lived. Claimant thought having a discharge on her employment record was the "worst thing" that could

happen to her and would stigmatize her when she sought work after her work separation, so she agreed to leave work in lieu of discharge, effective April 17, 2015. See Audio recording at ~22:40.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude claimant voluntarily left work with good cause.

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). For purposes of applying that rule, an individual who leaves work to avoid a discharge for misconduct or a potential discharge for misconduct has left work without good cause. OAR 471-030-0038(5)(b)(F). 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.

On April 17, 2015, claimant quit work to avoid being discharged the same day. The record does not suggest that claimant’s discharge would have been for misconduct. “Misconduct” means a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer’s interest. OAR 471-030-0038(3)(a) (August 3, 2011). Claimant was not aware of the precise reason the employer planned to discharge her, and the only incidents the employer had ever questioned claimant about were not incidents claimant knew or suspected might constituted violations of the employer’s expectations. Because claimant quit work to avoid a discharge that was not for misconduct, claimant is not disqualified from benefits under OAR 471-030-0038(5)(b)(F).

The record shows that, regardless of whether she agreed to quit, the employer intended to discharge claimant later the same day. The question is, then, whether claimant had good cause to quit work to avoid a certain, imminent discharge that was not for misconduct. When faced with certain unemployment, and fearing the stigmatizing effect a discharge would likely have on her work search, no reasonable and prudent person would conclude that it was better to be discharged when given the opportunity to quit instead. We therefore conclude that claimant quit work with good cause, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 15-UI-40376 is set aside, as outlined above.

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

**DATE of Service:** August 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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