

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0109**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 95225). Claimant filed a timely request for hearing. On January 25, 2016, ALJ Seideman conducted a hearing, and on January 26, 2016, issued Hearing Decision 16-UI-51690, affirming the administrative decision. On January 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Markham House Retirement Community employed claimant as a bus driver from April 24, 2015 through October 7, 2015.

(2) Claimant's job description specified that her primary duty was to drive residents of a retirement community to appointments, activities and shopping; the description also stated that she would perform other duties as assigned. Audio Recording at 30:37. Claimant signed a copy of this job description when she was hired.

(3) The employer had an "open door" policy; if an employee believed that an on-site manager had not resolved a problem, the employee was welcome to talk to other managers at the employer's head office. The employer's "open door" policy was described in a handbook claimant received when she was hired.

(4) Four days after claimant began working for the employer, she drove a fragile, elderly resident to an appointment for x-rays. Claimant was required to help the resident undress, assist the resident in getting on the table for the x-rays, and take the resident the restroom. Claimant was very uncomfortable in performing these duties because she had no training or special qualifications to perform them. She did not bring her concerns to the manager of the facility where claimant worked, or a manager at the employer's head office.

(5) Sometime after claimant began working for the employer, the activities clerk was assigned to supervise claimant's work. Claimant disliked the activities director because, on several occasions, the activities director told claimant that she was improperly loading and unloading passengers on the bus claimant drove. Claimant was insulted by these criticisms, because she was an experienced bus driver with extensive experience in safely transporting passengers. The activities director also directed claimant to perform housekeeping tasks such as vacuuming and dusting, if claimant had no assigned bus driving duties. Claimant was paid for this work, but believed she should not have to perform it because her primary job duty was to transport residents. Claimant complained about the activities director to the general manager of the facility where she worked; the manager told claimant that these problems were between claimant and the activities director. Audio Recording at 9:36. While working for the employer, claimant experienced three episodes of IBS because she was under stress working for the activities director. Audio Recording at 17:50.

(5) Every Wednesday, claimant drove residents to a local store so they could make personal purchases. For approximately four months, the employer required claimant to purchase \$200 worth of food and household items and supplies for the employer during these weekly shopping trips. Claimant was required to load these purchases on to the bus and unload them when she arrived at the employer's facility. Although claimant was physically able to perform this work, she did not want to do this work for the employer. Claimant did not believe it was her responsibility to be the employer's "gofer." Audio Recording at 16:21. When claimant spoke to manager about her unwillingness to shop for the employer, the manager thanked her for doing this work, told her that the items she purchased were needed by the employer, and that the employer appreciated claimant's willingness to perform shopping duties. *Id.*

(6) The employer regularly required claimant to take deposits to the bank; the deposits usually contained several thousand dollars. Claimant disliked making these trips because she believed she should have been bonded or at least given assurance that she would be held harmless if there was any problem with the deposit.

(7) Approximately two to three months after claimant began working for the employer, claimant's doctor required that she wear a heart monitor for 24 hours to detect any possible heart problems. Based on the results of the heart monitor, the doctor concluded that claimant did not have heart problems and released her to work. The doctor prescribed nitroglycerin to claimant, which claimant took once for a heart issue. Audio Recording 20:27. Claimant never talked to her doctor about whether she should continue her employment. Audio 21:30.

(8) On October 6, 2015, while claimant was sitting in the lobby of the retirement residence where she worked, a resident told claimant she was worried about another resident, who appeared to have a serious problem with her eye. The receptionist overheard this remark and told the resident that the eye problem had been taken care of. Claimant believed the receptionist spoke rudely to the resident. Subsequently, the resident who told claimant about the other resident's eye problem told claimant that the receptionist's comment "just about put me in tears." Audio Recording at 22:40.

(9) On October 7, 2015, claimant quit her job because she believed the employer did not treat residents properly and because she believed the employer treated her unfairly, by assigning her duties outside of

the scope of her job description and by requiring her to work under the supervision of the activities director.

**CONCLUSION AND REASONS:** We agree with the ALJ, and conclude that claimant voluntarily left work without 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). 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. Claimant had irritable bowel syndrome, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that 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 her employer for an additional period of time.

To the extent that claimant quit her job because she believed the employer treated her unfairly, she failed to demonstrate she faced a grave situation. Claimant knew and understood that her work for the employer would consist not only of transporting residents; the job description she signed when she was hired specified that she would perform other duties as assigned. The other duties claimant was assigned – cleaning, and shopping for food and supplies for the employer – were not so onerous that a reasonable and prudent person would refuse to perform them. Claimant admitted that she was physically capable of doing these tasks, but did not want to do them because she did not consider them part of her job description, and it was not her responsibility to be a “gofer” for the employer. Audio at 8:44, 11:30, 16:21. Claimant’s reluctance to assist a resident during a medical appointment is understandable. The record contains no evidence that claimant was obligated to perform this duty more than once, however. Claimant’s hesitance in making bank deposits for the employer was not objectively reasonable. Businesses commonly require employees who are not bonded to make bank deposits, trusting in the honesty and competence of the employee, and do not provide these employees with guarantees they will be held harmless if any problem arises from a deposit. Claimant testified that no problems occurred with any deposits she made, and offered no reason why any such problems might occur. Audio Recording at 17:00.

To the extent claimant quit work because she believed that her supervisor, the activities director, treated her unfairly, she also failed to demonstrate that she faced a grave situation. The activities director’s requirement that claimant perform cleaning tasks when claimant had no driving assignments was not unreasonable. While claimant may have been distressed by the activities director’s criticisms of her work, these criticisms were not so harsh that they created a hostile and oppressive work environment that left claimant no alternative but to quit. See *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (a claimant is not required to endure racial, ethnic, or sexual slurs or personal abuse, fearing that leaving an oppressive work situation will disqualify them from unemployment benefits.)

Finally, to the extent claimant quit her job because she believed the employer failed to treat residents of its retirement community appropriately, she failed to demonstrate good cause for leaving work. Claimant cited one instance where she believed a receptionist rudely treated a resident who expressed concern about another resident's medical issue. Even if claimant believed that the receptionist's behavior was inappropriate, she had the reasonable alternative of reporting the behavior either to the retirement community manager or the employer's head office under its "open door" policy.

Claimant testified that the working conditions she experienced were very stressful, and that she had three episodes of irritable bowel syndrome while working for the employer. This condition and any other symptoms of stress claimant might have experienced appear to have been effectively managed, however. Claimant was tested for and found not to have a heart condition. Claimant's physical issues were not so severe that she was compelled to ask her doctor about the advisability of continuing to work for the employer. Audio Recording at 21:30.

For the reasons stated above, we conclude that claimant failed to demonstrate that a reasonable and prudent person with irritable bowel syndrome would have concluded that her work environment created a grave situation that left her no alternative but to leave work. Claimant therefore failed to show good cause for quitting her job, and is disqualified from receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 16-UI-51690 is affirmed.

Susan Rossiter and J.S. Cromwell;  
D. H. Hettle, not participating.

**DATE of Service:** February 19, 2016

**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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