

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0202**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 145903). Claimant filed a timely request for hearing. On February 4, 2016, ALJ L. Turner conducted a hearing, and on February 5, 2016 issued Hearing Decision 16-UI-52435, affirming the Department's decision. On February 22, 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). Therefore, we did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Kerr Contractors, Inc. employed claimant from March 30, 2015 to May 11, 2015.

(2) On February 27, 2015, the employer offered claimant a position as a certified density technician. The terms of the offer included the requirement that claimant "complete and receive certifications in CDT classes as a condition of employment." Exhibit 1. Claimant accepted the job.

(3) During claimant's employment, three supervisors repeatedly told claimant that she would have to pass her CDT certification exam as a condition of remaining employed. She was told almost every day that if she did not pass the test, she would not have a job.

(4) In April 2015, claimant attempted the CDT training exam but failed. Claimant's instructor told her she could re-take the exam, but if she failed a second time she would have to retake the class before she would be allowed to attempt the exam again. The next class was not going to be offered until April 2016.

(5) On April 21, 2015, claimant sent an email to her CDT training class instructor and another person requesting some one-on-one help with her CDT training. Claimant wrote, in pertinent part, "I need to

get a good grasp of this, my job is contingent on my understanding this and passing Friday and I want this . . . I know it is something simple I am missing. I would like to take some addtl [*sic*] time . . . to get some understanding.” Exhibit 1.

(6) Claimant retried the exam in May 2015. On May 8, 2015, claimant learned that she had failed the exam again. Claimant understood that she would lose her job as a result.

(7) On May 11, 2015, claimant reported to work and returned her keys and badge. She spoke with a supervisor, told him she had failed the exam and was turning in her belongings. He commented to her that the test was very hard, then walked away. He did not suggest that she might be able to continue working for the employer without the certification or that she should speak with her direct supervisor before turning in her belongings. The same supervisor later completed a work separation form about claimant’s leaving, on which he noted that claimant could have continued to work for the employer in a position that did not require the CDT certification.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude claimant quit 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). 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.

We agree with the ALJ that claimant voluntarily left work. The ALJ concluded that claimant quit without good cause based on her assumption that she was going to be discharged for failing the CDT certification exam, and, while it was possible that the employer may have decided to fire her, it may not have, and a reasonable and prudent person would not have quit work without first checking with the employer about its intent.<sup>1</sup> Although we agree that in some circumstances it is reasonable to expect an individual to check with the employer before concluding that she would be discharged as a reasonable alternative to quitting, we disagree in this instance.

The employer hired claimant on the condition that she obtain her CDT certification. Claimant was repeatedly, on a near-daily basis, told by three separate supervisors that if she did not pass her CDT certification exam, she would not have a job. No reasonable and prudent person could conclude on the basis of that information that the employer would continue to employ her if she did not pass the CDT certification exam.

After claimant failed the exam the first time and was preparing to take it a second time, the employer did not offer to transfer her to a different position or suggest she apply for a transfer in case she failed again.

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<sup>1</sup> Hearing Decision 16-UI-52435 at 3.

When claimant failed her exam for the second time and spoke with a supervisor as she returned her badge and keys while quitting, the supervisor's only comment to her was that the exam was "very hard." Although the supervisor was not claimant's direct supervisor, he was the supervisor responsible for filling out her work separation paperwork for the employer. We infer that if he thought her employment would not end, or that she might be reassigned to duties that did not require the CDT certification, he would have suggested that she did not have to leave work because she had failed the exam, or suggested that she might seek a transfer to a different position, but he did not. Although that same supervisor wrote on claimant's work separation paperwork that claimant could have continued to work for the employer in a position that did not require CDT certification, the record developed at hearing fails to show what, if any, positions were available to claimant at the time of her separation, or that the employer would make such a position available to her as an alternative to leaving. Under the circumstances, any reasonable and prudent person whose job was contingent on obtaining a CDT certification would conclude that it was futile to check with the employer about the availability of continuing work that did not require a CDT certification.

In sum, a reasonable and prudent person would only conclude that she had two choices, to quit her job because she failed to obtain the certification that was required as a condition of her employment, or to wait for the employer to fire her for the same reason, neither of which is a disqualifying work separation for purposes of unemployment insurance.<sup>2</sup> Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Hearing Decision 16-UI-52435 is set aside, as outlined above.

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

**DATE of Service:** March 7, 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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<sup>2</sup> A claimant can only be disqualified from receiving benefits based on a discharge for misconduct, which requires commission of a willful or wantonly negligent violation of a standard the employer had the right to expect of her. Claimant violated the employer's expectations by failing to obtain the CDT certification, but, given her efforts to take and pass the exam, her violation was not attributable to her as willful or wantonly negligent conduct. Had she waited for the employer to discharge her, the discharge would not be for misconduct, and the work separation would not be disqualifying for purposes of claiming unemployment insurance benefits.