

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0240**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed without good cause to accept suitable work (decision # 91847). Claimant filed a timely request for hearing. On February 9, 2016, ALJ Triana conducted a hearing, and on February 10, 2016, issued Hearing Decision 16-UI-52727, affirming the administrative decision. On February 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

In her written argument, claimant provided new information that might have changed the outcome of this decision. Claimant indicated, however, that this information could not be disclosed to the employer without her consent, and provided no written consent to make this disclosure. In addition, 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).<sup>1</sup>

**FINDINGS OF FACT:** (1) On August 17, 2015, claimant began working as a substitute lead teacher in a preschool and kindergarten classroom at the employer's Montessori school, located in Aloha, Oregon. (Claimant had previously worked as a lead teacher at a Montessori school in Beaverton, Oregon which was owned by the same individuals who owned the Aloha Montessori School.) Claimant earned \$17 per hour as a substitute lead teacher at the Aloha school. Transcript at 14. Claimant has had specialized training in Montessori teaching methods, and had begun to work as a Montessori teacher in 2009.

<sup>1</sup>Under ORS 657.290(3) and OAR 471-041-0145 (October 29, 2006), claimant may request reconsideration of our decision. As discussed above, EAB may only consider new information not presented at the hearing if the requirements of OAR 471-041-0080 are met.

(2) In her position as a substitute lead teacher for the employer, claimant shared a partitioned classroom with B.<sup>2</sup> Claimant had worked with B at the Beaverton school, and knew that B had no formal training in Montessori principles. On August 17, 2015, claimant observed B tell a child who had spilled his milk that the spill occurred because the child had been playing with his cup. Claimant was upset by this interaction. She believed that B's conduct was inconsistent with Montessori teaching methods and that B should have involved the child in cleaning up the spilled milk and showed the child how to properly hold his cup. Also on August 17, B yelled across the room at one of claimant's students, telling the student he was too loud. Exhibit 1. Claimant believed that B's conduct was inappropriate because it sent a "mixed message to the children because she's asking them not to yell, but she's yelling at them not to yell." Transcript at 34.

(3) On August 24, 2015, one of the employer's owners asked claimant if she would accept a permanent full-time position as a lead preschool and kindergarten teacher. The position paid \$16 or \$17 per hour. Claimant told the owner that the position was not a good fit for her, and gave the owner the name of another person who was qualified for the position and might be interested in it. Claimant declined the permanent position because she felt that she was being harassed by B, and because she wanted to obtain a position at another Montessori school where she believed the environment would be more comfortable and enjoyable for her. Transcript at 41-42.

(4) Sometime after claimant refused the job offered to her by the employer's owner, claimant complained to the school director about B's behavior.

(5) Claimant continued to work for the employer as a substitute lead teacher until August 28, 2015.

(6) The median rate of pay for the type of work claimant was offered on August 24 is \$14.31 per hour. Claimant's labor market is Hillsboro, Aloha, Banks, Beaverton, Forest Grove, McMinnville and southwest Portland.

**CONCLUSION AND REASONS:** We agree with the ALJ, and conclude that claimant failed without good cause to accept suitable work.

An individual is disqualified from the receipt of unemployment benefits if the individual refused without good cause to accept suitable work when offered. ORS 657.176(2)(e). Good cause is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to accept suitable work when offered by an employer. OAR 471-030-0038(6) (August 3, 2011). In determining whether work is suitable for an individual, factors to be considered include "the degree of risk involved to the health, safety and morals of the individual," as well as prior training and experience and "distance of the available work from the residence of the individual." ORS 657.190. Work is not considered suitable if the remuneration for it is substantially less favorable than the remuneration prevailing for such work in the locality. ORS 657.195. A rate of pay for offered work is "substantially less favorable" if the rate of pay is at least ten percent lower than the average of pay in the locality, as determined by the Department. OAR 471-030-0037(1) (August 1, 2014). Claimant agrees that she had the training and experience needed to perform the work the employer offered her – a position as a lead preschool kindergarten teacher – and that the location of the offered work was convenient for her. The rate of pay for this

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<sup>2</sup> B is a pseudonym.

offered work was not substantially less favorable than the rate of pay for similar work in the locality.<sup>3</sup> Claimant asserted, however, that she had good cause for refusing the job offered to her because it would have required that she work in an environment made hostile by B's harassment, and because it would have hindered her ability to obtain a job at other Montessori schools, where she preferred to work.

To the extent that claimant refused the offered work because of B's harassment, she failed to demonstrate good cause for her refusal. The evidence of B's behavior which claimant found inappropriate consisted of two incidents which occurred on claimant's first day working as a substitute teacher for the employer. Claimant complained to the school director about B only after she refused to accept the offered work, however. Had the director known about claimant's concerns, she would have worked with B and claimant to attempt to create a more productive and less conflictive working relationship. Transcript at 16- 17. A reasonable and prudent person, who was concerned about the behavior of another employee with whom she was expected to work, would have explored the possibility of resolving this issue before refusing to accept an offered a job.

To the extent that claimant refused the offered work because she hoped to find a job with a more desirable work environment, she failed to demonstrate good cause for her refusal. Claimant offered no reason why she could not have applied for work at other schools, and quit her job with the employer if and when she was accepted for a position at another school.

Claimant failed to demonstrate good cause for refusing to accept an offer of suitable work. She is disqualified from the receipt of unemployment benefits on the basis of this refusal.

**DECISION:** Hearing Decision 16-UI-52727 is affirmed.

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

**DATE of Service:** March 18, 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>3</sup> Claimant also asserted that the offered work was not suitable because it would have posed a risk to her health. There is no evidence in this record, however, that work as a permanent lead teacher would have adversely affected claimant's health.