

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0740**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144622). Claimant filed a timely request for hearing. On May 3, 2016 and May 19, 2016, ALJ R. Frank conducted a hearing, and on May 27, 2016 issued Hearing Decision 16-UI-60659, affirming the Department's decision. On June 15, 2016, 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. Even if we had, the outcome of this decision would remain the same for the reasons explained.

**FINDINGS OF FACT:** (1) Aramark Correctional Services, LLC employed claimant, last as a supervisor, from November 12, 2003 to February 17, 2016.

(2) In September 2014, claimant was injured during an off-duty motor vehicle accident. Claimant's doctor advised her to take some time off work to recover from the injuries. Claimant did not take time off work because the employer was short-staffed and she feared repercussions if she took time off work.

(3) In the beginning of November 2015, claimant received an off-duty head injury. According to the emergency room physician, the injury caused nerve damage and changes to the curvature of claimant's neck. The emergency room doctor advised claimant to avoid lifting and take one week off work, then obtain additional medical treatment.

(4) Claimant returned to work the day after her injury and continued working for approximately one week. She provided the employer with medical documentation. She did not seek additional medical treatment because she did not have insurance.

(5) Claimant had ongoing concerns that the work environment created some safety issues. She was also concerned about the written warning she had received for an absence. Claimant notified her supervisor and human resources of her concerns and had some discussions about her concerns with them.

(6) Claimant last worked on November 17, 2015.<sup>1</sup> Claimant notified the employer that she was going to take her doctor's advice and take some time off work. Beginning November 18, 2015, she applied for a medical leave of absence under FMLA. The employer provided her with information about getting approved for a leave of absence through Sedgwick, the employer's third-party leave company.

(7) On November 30, 2015, Sedgwick sent a letter to claimant regarding her medical leave of absence. The letter said that claimant's request met the FMLA basic eligibility requirements, but she was required to submit information, including a medical certification form, before Sedgwick could determine whether her FMLA protected time off could be approved. On December 7, 2015, Sedgwick began processing claimant's claim for short-term disability benefits. Claimant did not return any medical documentation to Sedgwick in support of her claims for medical leave or short-term disability benefits.

(8) Claimant last spoke with the human resources person in approximately November, and last spoke with her supervisor in December or January. On February 17, 2016, Sedgwick provided the employer with a final notice that claimant's applications for leave and disability benefits had been denied due to claimant's failure to provide Sedgwick with medical documentation of her health condition. At that time, neither human resources or claimant's supervisor had heard from claimant in a over a month, and concluded that claimant had quit work.

(9) Claimant never sought medical treatment for her injuries after the initial emergency medical treatment. After approximately the second week of November 2016, she did not have any medical restrictions imposed by a physician.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant quit work without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant chose to stop working after November 17th based on her physical health and concerns about her working conditions. She was notified by the employer and Sedgwick of her responsibility to

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<sup>1</sup> Although the ALJ excluded the documents the employer offered into evidence, marked as Exhibit 1, because claimant did not receive copies of them prior to the hearing, data contained therein is necessary to complete the record, for example, the dates upon which claimant's leave of absence commenced, the date her short-term disability application began to undergo processing, and the dates notices concerning the leave of absence were sent to claimant. The information is therefore admitted into evidence by EAB under OAR 471-041-0090(1) (October 29, 2006). Copies of Exhibit 1 are included with the copies of this decision mailed to the parties. Any party that objects to our admitting Exhibit 1 into evidence must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, Exhibit 1 will remain in the record.

maintain contact with the employer and provide medical documentation supporting her requests for a medical leave of absence and short-term disability. She did not maintain contact with the employer after approximately January 2016, which was approximately two months after her emergency room physician had suggested she take a week off work, and never provided Sedgwick with medical documentation necessary to support her requests for leave or short-term disability. Claimant argued during the hearing that she had tried to contact the employer while off work but received no response, but the employer's witness testified that she provided claimant with her phone number and email address and never received a call or email from claimant during the relevant time period. There is nothing in this record to suggest that the employer did not have continuing work available to claimant through the end of February had she chosen to return, and, notably, claimant did not dispute the characterization of her work separation as a quit during the hearing. Given that claimant stopped contacting the employer in December 2015 or January 2016, and did not respond to requests for information from Sedgwick, it appears more likely than not that claimant chose not to continue working for the employer by the time Sedgwick denied her leave and disability benefit requests. The work separation therefore was a voluntary leaving.

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).<sup>2</sup> 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.

The record is unclear as to whether claimant quit work because of her working conditions or because of her physical health. Regardless which was the primary reason, claimant did not establish that she had good cause for quitting work. With respect to claimant's concerns about her working conditions, claimant did not establish by a preponderance of the evidence what the gravity of her concerns were beyond vague allusions to safety concerns based on rumors or gossip, and it appears more likely than not that the employer's human resources department was receptive to claimant's complaints and working with her on those issues. With respect to claimant's physical health or any need for ongoing time off work, the record shows that, at the time of the work separation, claimant did not have any medical restrictions, the employer, through Sedgwick, was working with claimant regarding her requests for medical leave or short-term disability benefits, and it appears claimant had, more likely than not, recovered sufficiently to resume working. A reasonable and prudent person, whether of normal sensitivity or with the characteristics and qualities of an individual with a three-month old head injury, would consider the situations claimant described to be of such gravity that no reasonable alternative to quitting work existed. We therefore conclude that claimant quit work without good cause, and she must be disqualified from receiving unemployment insurance benefits until she has requalified for benefits by earning four times her weekly benefit amount from work in subject employment.

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<sup>2</sup> On this record, claimant's head injury was not a permanent or long-term impairment, as that term is defined at 29 CFR § 1630.2(h), as the record lacks evidence establishing what the injury was or what its effects were. Regardless which standard is applied, e.g., that of a reasonable and prudent person of normal sensitivity or that of a reasonable and prudent person with the characteristics and qualities of an individual with such an impairment, the outcome of this decision would remain the same for the reasons explained herein.

**DECISION:** Hearing Decision 16-UI-60659 is affirmed.

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

**DATE of Service:** July 21, 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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