

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0858**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124903). Claimant filed a timely request for hearing. On June 30, 2016 and July 11, 2016, ALJ Monroe conducted a hearing, and on July 15, 2016 issued Hearing Decision 16-UI-63906, affirming the Department's decision. On July 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Danville Services of Oregon employed claimant as a resident assistant from March 31, 2016 to April 28, 2016.

(2) Claimant had celiac disease and small intestinal bacterial overgrowth, both of which were permanent health conditions that affect claimant's digestive system. Claimant received medical care from a physician, who advised claimant that his conditions were sensitive to circadian rhythm and that claimant should ensure that he got adequate sleep. Claimant was incapable of working night shifts because doing so disrupted his sleep patterns and caused him to go without sleep.

(3) The employer initially scheduled claimant to work the 2:00 p.m. to 10:00 p.m. shift. Claimant found that shift acceptable and was able to maintain his normal sleep patterns while working it.

(4) The employer required its regularly scheduled 2:00 p.m. to 10:00 p.m. shift resident assistants to have a driving record that did not bar them from driving for the employer during work hours. The employer refused to schedule employees unable to drive for the employer during that shift.

(5) On April 28, 2016, the employer learned that claimant's driving record was such that he was not eligible to drive for the employer. The employer notified claimant that it could no longer schedule him to work the 2:00 p.m. to 10:00 p.m. shift. The employer offered to transfer claimant to the night shift. Claimant refused because working that shift would disturb his sleep patterns. The employer offered to transfer claimant to on-call status, but could not guarantee that he would have a full time work schedule. Claimant understood that he could be called to work any shifts, including the 2:00 p.m. to 10:00 p.m.

shifts, if he worked on-call. He understood that he would frequently be offered night shifts, but also that he had the right to refuse any shift that was offered to him. Claimant was concerned that the offers of on-call work would decrease if he refused night shifts. Claimant needed full time work to meet his financial obligations and was also concerned that he would not be offered enough on-call work to support himself.

(6) On April 28, 2016, claimant refused the employer's offer to transfer him to on-call employment, thereby quitting work.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant voluntarily left 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).

On April 28, 2016, the employer notified claimant that it could not continue to employ claimant in the 2:00 p.m. to 10:00 p.m. shift. However, for purposes of unemployment insurance benefits, "work" means "the continuing relationship between an employer and an employee" and is not defined in terms of an employee's ability to work a particular shift or position. See OAR 471-030-0038(1)(a). Because the employer offered to transfer claimant to the night shift or to an on-call position, the relationship between the employer and claimant continued notwithstanding the employer's inability to offer claimant work during his preferred shift. Because claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had celiac disease and small intestinal bacterial overgrowth, permanent or long-term "physical or mental impairments" 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 his employer for an additional period of time.

Claimant quit work, alleging that the only continuing work available to him included a night shift component, which he was incapable of working. Transcript at 5-6. There is no dispute on this record that night shift work was unsuitable for claimant. Working that shift would unduly disrupt claimant's sleep patterns and have a significant adverse affect on him due to the nature of his medical conditions. While the employer would not regularly schedule claimant to work during his preferred shift, however, claimant nevertheless did not establish good cause for quitting work rather than continuing to work in the on-call position. The employer had continuing work available for claimant during on-call shifts, which included his preferred 2:00 p.m. to 10:00 p.m. shift as well as other shifts, which he was free to

decline. Claimant knew at the time of the separation that he was free to decline any on-call shift he did not want to work. Transcript at 39-40. Claimant did not establish that he would have to work unsuitable night shifts if he accepted the employer's offer of on-call work, nor, given that he could refuse them, did he establish that being offered on-call night shift work was a grave situation for him.

Claimant also opted to quit work rather than transferring to on-call work in "mild" part because he needed to work full time in order to meet his financial obligations. Transcript at 15, 19. There is no dispute that the employer could not guarantee claimant full time work if he was in an on-call position, particularly given that claimant needed to frequently reject offers of on-call night shift work to protect his health. Nor is there any dispute that working part time would provide claimant with insufficient income to support himself, making it impractical for claimant to rely upon on-call work from the employer as his sole or long-term source of income. However, an "important" principle underlying the good cause analysis in a voluntary leaving case is that in order "to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work." *See Oregon Public Utility Commission v. Employment Dep't.*, 267 Or.App. 68, 340 P.3d 136 (2014) (so stating, on different facts). Although claimant understandably had concerns about his ability to meet his financial obligation while earning only part time income, he did not improve his financial circumstances by leaving a job that offered him the possibility of some income when the result of that act was that he was left with no income, or show that he derived any other benefit by having left work.

For those reasons, we conclude that claimant quit work without good cause. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Hearing Decision 16-UI-63906 is affirmed.

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

**DATE of Service:** August 10, 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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