

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1049**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 110558). Claimant filed a timely request for hearing. On July 28, 2016, ALJ M. Davis conducted a hearing, and on August 10, 2016, issued Hearing Decision 16-UI-65323, affirming the administrative decision. On August 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Living Opportunities, an agency that provides residential and other services to people with intellectual and developmental disabilities, employed claimant as a personal support worker from January 26 through April 26, 2016.

(2) As part of the training necessary for her position, claimant attended a February 2, 2016 session conducted by the employer's director of residential services. During this training, claimant was instructed that she had a duty to report any suspected abuse of the residents for whom she would be caring.<sup>1</sup> The director of residential services told claimant and the other trainees to contact her if they had any questions or concerns about the treatment of residents for whom they cared.

(3) After she completed training, claimant was initially told that she would be working Monday through Friday, from 8 a.m. to 4 p.m. When claimant began work at the residential facility to which she was assigned, her supervisor assigned her to work Tuesday through Saturday, from 11 a.m. to 7 p.m. Sometime during her employment, claimant told her supervisor that she wanted Sunday or Monday off. Her supervisor then changed her schedule so she was assigned to work Thursday through Sunday. Transcript at 27.

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<sup>1</sup> As a personal support worker, claimant was obligated to report abuse of a person over 65 and persons with disabilities to a law enforcement agency or the Oregon Department of Human Services (DHS), if she had reasonable cause to believe the person had suffered abuse. ORS 124.050(9)(v) and 124.060.

(4) Sometime in February or March 2016, the credit card of a resident in the house where claimant worked went missing. Claimant and other staff members were interviewed as part of the investigation into the lost card, but the employer did not suspect any particular employee of being responsible for the loss of the card. Transcript at 33. The credit card was eventually found.

(5) Sometime in April 2016, claimant noticed that one of the residents to whom she provided care had long bangs that impeded her ability to see clearly. Claimant asked the resident if she could trim the resident's bangs, and the resident gave claimant permission to do so. Claimant was subsequently told that because the resident whose hair claimant cut was very particular about her hair, claimant should speak with one of her two supervisors if she ever again wanted to cut the resident's hair. Transcript at 20. Claimant's supervisors believed the hair cut claimant had given the client was a training issue and not a reason for any type of disciplinary action. *Id.*

(6) Also sometime in April, the program director demonstrated to claimant and another employee how to serve coffee to a resident while the resident was in bed. The program director propped the resident's head up on a pillow, gave the resident a cup of coffee with a straw in it, and placed the straw in the resident's mouth. Transcript at 26-27. Claimant concluded that the program director was abusing the resident by force feeding him. She did not want report the suspected abuse to the director of residential services or any other manager, however, because she was worried that the employer would retaliate against her for making such a report. Transcript at 31.

(7) On April 26, 2016, claimant quit her job. She voluntarily left work because she believed the employer unfairly assigned her a work schedule that required her to work weekends, had treated her harshly during the investigation of the lost credit card and in regard to the hair cut she gave the resident. She was also upset by the force feeding of the resident she thought she had observed. Her distress over her working conditions had caused her to have headaches and stomach aches. Transcript at 14.

(8) After claimant quit, the employer's human resources (HR) director called her regarding arrangements for her final paycheck and to ask about the reasons for her resignation. During this conversation, claimant told the HR director that there were "issues" at the house where she worked, but did not want to discuss these matters in detail. The HR director told claimant that the employer had other sites where she could have worked. Transcript at 18.

**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 quit her job because she believed the employer had treated her harshly and unfairly. In addition, claimant was upset because she believed her supervisor was abusing a resident of the home where claimant worked. Claimant and the employer's witnesses presented different accounts of the incidents that caused claimant to voluntarily leave work. Claimant testified that she was denied a work schedule that gave her time off on the weekends. Claimant's supervisor, however, testified that claimant asked for Sundays or Mondays off, and that he accommodated her request by regularly scheduling her to work Thursday through Sunday. Transcript at 27. Claimant asserted that a supervisor "scream[ed]" at her about the loss of a resident's credit card, for which claimant was not responsible. Transcript at 8. The employer's witness testified that claimant was one of a number of employees who were interviewed about the lost credit card, and that neither claimant nor any other employee was targeted during this investigation. Transcript at 33. Claimant believed she was reprimanded for cutting the hair of a resident; the employer's witness testified that the hair cut claimant gave the resident was a minor issue about which claimant needed to be trained, and that claimant was not reprimanded for the haircut. Transcript at 20-21. In regard to the abusive force feeding of a resident that claimant asserted she had witnessed, her supervisor testified that he assisted a resident to drink coffee through a straw, and never forced the resident to drink coffee. Transcript at 26-27. The evidence regarding whether the employer treated claimant harshly or unfairly and whether claimant witnessed abuse of a resident was, at best, equally balanced. Claimant therefore failed to meet her burden to demonstrate by a preponderance of evidence that she faced a grave situation in her workplace that left her no alternative but to voluntarily leave work.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 16-UI-65323 is affirmed.

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

**DATE of Service:** October 6, 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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