

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1056**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114233). Claimant filed a timely request for hearing. On August 18, 2016, ALJ M. Davis conducted a hearing, and on August 24, 2016 issued Hearing Decision 16-UI-66190, affirming the Department's decision. On September 12, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but 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 considered the entire record, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Northwest College of Hair Design employed claimant from March 24, 2015 until June 24, 2016 as an instructor.

(2) Throughout her employment, claimant saw other instructors leave work at times for "hours" during their shifts without clocking out. Audio Record at 20:52 to 20:57. Claimant was dissatisfied because she believed none of the employees reported the instructors' absences to the employer. In December 2015, claimant was upset when her supervisor disciplined her by suspending her for one week without pay when claimant refused to work on a Saturday. Claimant believed her supervisor treated other employees more favorably than her.

(3) Claimant felt stressed by her coworkers' behavior and the supervisor's failure to address it. She began taking medication for anxiety.

(4) On June 11, 2016, claimant saw a coworker consuming alcohol during her shift at work. The coworker appeared intoxicated.

(5) On June 13, 2016, claimant told the lead night instructor that she saw a coworker consuming alcohol at work. On June 14, 2016, claimant reported the incident to her supervisor. Neither the lead nor the supervisor reported the incident to human resources.

(6) Claimant met with the director of human resources during the week of June 12, 2016, but did not report her concerns about the employee she had seen consuming alcohol at work or other concerns about her working conditions.

(7) On June 24, 2016, the employer's human resources director called claimant and left her a message because claimant had not contacted the employer since June 22, 2016. Claimant called the human resources director back that evening and told her that she quit because of her concerns about the workplace. Claimant explained her concerns about instructors leaving work while on duty and about the coworker who appeared intoxicated at work on June 11. Claimant did not discuss her concerns with human resources before June 24, 2016.

**CONCLUSIONS 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 work because her coworkers' conduct created a stressful workplace environment for her. Claimant was frustrated because she was disciplined when she missed work on one occasion, yet her coworkers appeared to face no consequences when they engaged in inappropriate and dishonest conduct. As a result of the coworkers' conduct at work, claimant began taking anxiety medication. Claimant therefore demonstrated that she faced a grave situation due to her coworkers' conduct at work.<sup>1</sup>

However, although claimant's work situation was grave, she had the alternative of telling the employer's human resources director that she saw employees misrepresenting their work hours and consuming alcohol at work and asking the director to address those issues because it was causing her stress. The reason claimant provided for not doing this was that she was not in the "circle" of employees that received preferential treatment from the supervisor. Audio Record at 26:19 to 27:02. Even assuming that was true, the record does not show that the human resources director failed to address issues

---

<sup>1</sup> A claimant with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) 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 the employer for an additional period of time. The record fails to show that claimant's anxiety condition constituted a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). As a result, we will analyze claimant's voluntary leaving under the general good cause standard in OAR 471-030-0038(4).

claimant had presented to her in the past, or that complaining to human resources would have been futile. Claimant had been speaking with human resources about an unrelated matter during the last two weeks of her employment, and could have, at those times, told the human resources director her concerns. While claimant demonstrated that she faced a grave situation at her job, she failed to show that the situation was so grave that a reasonable and prudent person would have no reasonable alternative but to leave work.

Claimant failed to prove that she had good cause for leaving work when she did. Claimant is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 16-UI-66190 is affirmed.

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

**DATE of Service:** October 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.