

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1221**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 15, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152841). Claimant filed a timely request for hearing. On October 17, 2016, ALJ Murdock conducted a hearing, and on October 19, 2016 issued Hearing Decision 16-UI-69534, affirming the Department's decision. On October 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Interim Healthcare employed claimant as a caregiver from August 12, 2014 until July 8, 2016.

(2) Sometime around May 2016, claimant was arrested and charged with the crime of identity theft. Claimant was released from custody pending trial, but that release was subject to conditions imposed by claimant's pretrial release supervisor.

(3) On July 8, 2016, the employer was notified by a state entity that the conditions of claimant's pretrial release prohibited claimant from "unsupervised work as a caregiver." Audio at ~10:05. The employer was not informed of the charges that had been brought against claimant. In an email the employer's chief financial officer (CFO) sent to claimant that day, the CFO informed claimant of this work-related prohibition, but stated that the employer "could see a way to get around it" and offered claimant a non-caregiving position in the employer's office at the front desk "helping with phones and paperwork." Audio at ~7:12; ~10:30. Claimant declined the front desk position, and told the CFO she "needed time to get this stuff [her legal issues] taken care of." Audio at ~10:30; *see also* Audio at ~6:02. Claimant also thought the conditions of her pretrial release would not allow her to work in a non-caregiving capacity for the employer since she was charged with identity theft. Claimant did not inform the CFO of the nature of the crime with which she was charged or express concern that working at the employer's front desk would violate the conditions of her release.

(4) On July 8, 2016, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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 his employer for an additional period of time.

While claimant contended at hearing that she was discharged as a result of the conditions of her pretrial release, she did not dispute that the CFO offered her a non-caregiving position working at the employer’s front desk after the employer was notified she was prohibited from working as an unsupervised caregiver. Audio at ~4:30. Although claimant generally contended she would not have been allowed to work for the employer in this non-caregiving capacity since she was charged with identity theft, there was no evidence in the record that claimant actually spoke with her pretrial supervisor about whether the position the employer offered to her was or was not consistent with the conditions of her release or to try to determine how, if at all, the employer could adjust the work responsibilities of any non-caregiving position so that it would not run afoul of her release conditions. From the apparently sincere testimony of the CFO, it appeared that the employer would have tried, if at all possible, to work around the conditions of claimant’s pretrial release in order to retain claimant as an employee. Audio at ~16:18. A reasonable and prudent person in claimant’s position, who wanted to continue working, would at a minimum have communicated with the pretrial release supervisor or someone else in authority and determined that it was not reasonably possible for the employer to design a job that met the conditions of her pretrial release before concluding that she needed to leave work.

Claimant also contended that she did not accept the employer’s offer to work at the front desk because she needed to devote uninterrupted time to her legal issues as well as attending numerous court appearances and appointments related to those issues. Audio at ~7:38. However, claimant presented no evidence that the employer would not allow her the time away from work she needed to adequately attend to her legal matters. Absent such evidence or like evidence, claimant did not show that adhering to the employer’s proposed work schedule would gravely impede her ability to handle her pending legal affairs.

Claimant did not show that she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-69534 is affirmed.

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

**DATE of Service: November 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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