

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1402**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 4, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 140125). Claimant filed a timely request for hearing. On December 5, 2016, ALJ Holmes-Swanson conducted a hearing, and on December 7, 2016, issued Hearing Decision 16-UI-72422, affirming the administrative decision. On December 12, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) From July 7, 2015 until October 1, 2016, Blue Harbor Senior Living employed claimant as a community relations director at one of the senior living facilities it operated. Claimant's job duties included selling placement in the facility to prospective residents and their families, conducting tours for prospective residents and their families, answering questions about the facility, and assisting residents when they moved into the facility. The employer had managers on site at the facility where claimant worked, as well as managers located off site in the employer's regional office.

(2) In an October 7, 2015 email, claimant notified the employer's corporate managers about a number of problems she was experiencing at her job, including lengthy work days, new and inexperienced management and caregiving staff, an "unrealistic" number of new residents scheduled to move in during October 2015, and the amount of work she was required to perform after a resident moved in. Exhibit 1, 10/7/15 email. Claimant was able to obtain some help with these problems from the facility's executive director, but the employer eventually discharged the executive director. Although managers from the employer's regional office were expected to provide assistance to the facility where claimant worked, claimant found that the managers did not provide satisfactory or adequate help.

(3) In July and August 2016, claimant observed continued and greater problems with the staffing levels at, and the maintenance of, the facility, as well as the quality of care provided to the facility's residents.

Although claimant repeatedly contacted managers in the employer's regional office about these problems, she was told that she should focus only on selling the facility to prospective residents, and not concern herself with any other matters. Claimant found, however, that the problems she saw affected her ability to sell the facility to prospective residents and their families. One family that toured the facility with claimant told claimant the carpet smelled "awful," and another family that toured with claimant complained about the amount of time it took the staff to respond to a resident who called for assistance. Transcript at 17. Sometime prior to June 2016, claimant's workload increased because the employer discharged an employee who assisted her with her job duties. Transcript at 10; Exhibit 1, 8/2/16 email.

(4) Sometime in July or August 2016, the facility where claimant worked had only one caregiver on duty during a night shift, even though state law required that the facility have three on duty. During that night, two residents fell and had to be hospitalized. One resident remained on the ground for 30 minutes; as a result of this incident, the resident's family removed him from the facility. Transcript at 10-11.

(5) In August 2016, as a result of the problems she was having on the job, claimant began to have stomach aches, problems sleeping at night, and an irregular heartbeat. Claimant began to experience anxiety attacks.

(6) In an August 2, 2016 email, claimant told one of the regional managers that she felt "the pressure to reach occupancy goals lately has escalated into bullying," and that she was being unfairly attacked and blamed for the facility's problems, "even though numbers have been at their highest since I started in July 2015." Exhibit 1, 8/2/16 email. In her email, claimant attributed the decrease in the number of residents moving in due to the discharge of the facility's memory care director and high staff turnover. She also explained that it was unrealistic for the manager to expect that she concentrate only on sales, when "continuous staff turnover, untrained staff, inherent daily demands and unpredictable nature of the work" required that she spend time to make sure new residents were happy and did not leave. Claimant copied this email to the employer's human resources department. *Id.* Although the manager to whom claimant sent the email told claimant she would find time to meet with claimant to talk about her concerns, the manager never met with claimant.

(7) On August 26, 2016, the daughter of one of the residents complained to claimant about the lack of care being provided to her mother; the daughter told claimant because the facility did not have an executive director, she wanted to immediately speak to the facility's owner. (At the time the daughter made the complaint, the facility where claimant worked had no on site executive director, no nurse on duty, and no memory care coordinator). In an email, claimant notified two of the employer's regional managers about the complaint, noting that the resident was "[a]t risk of move out – needs attention TODAY." Exhibit 1, 8/26/16 email. The corporate manager called the facility's nurse, who was unable to resolve the situation to the satisfaction of the daughter. On August 27, the daughter complained again to claimant about her mother's care. One of the corporate managers whom claimant notified about the daughter's complaint subsequently told claimant that she was tired of having conversations about the residents' care with claimant. Exhibit 1, 9/2/16 email.

(8) Based on the events of August 26, claimant concluded that she could no longer continue to work for the employer. In a September 2, 2016 email, claimant notified two of the employer's regional managers

that she was quitting her job, effective October 3, 2016. Claimant quit her job because of a stressful work environment that adversely affected her health, and because she felt the managers unfairly pressured her to meet sales goals. Exhibit 1, 9/2/16 email.

**CONCLUSION AND REASONS:** We disagree with the ALJ, and conclude that claimant voluntarily left work with 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. Under OAR 471-030-0038(5)(f), where the gravity of the situation results from an individual’s deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4).

Claimant quit her job due to the stressful nature of her work environment. We agree with the ALJ that the situation claimant faced was a grave one. Her work load had increased significantly after the employee who assisted her was discharged, and the lack of adequate staffing at the facility where claimant worked made it extremely difficult for her to perform her job duties, *i.e.*, attract new residents to the facility. The stress of her working conditions adversely affected claimant’s health – she began to have stomach aches and difficulties sleeping, and also experienced anxiety attacks.

The ALJ, however, concluded that claimant had a reasonable alternative to leaving her job when she did. According to the ALJ, claimant could have attempted to resolve the problems in her facility by bringing them to the attention of the “employer’s human resources department. The evidence does not show that this would have been unreasonable or futile.” Hearing Decision 16-UI-72422 at 3. We disagree.

Contrary to the ALJ’s assertion, claimant notified the employer’s human resources department of her concerns: her August 2, 2016 email regarding the problems she was experiencing was copied to “HR.” Exhibit 1, 8/2/16 email. In addition, it seems implausible that human resources representatives would or could resolve issues raised by claimant that the employer’s regional managers did not address. We also conclude that the employer’s failure to offer any solutions to the problems claimant had identified, after claimant gave 30 days’ notice that she was resigning, indicates that any further attempts to obtain assistance from the employer’s managers would have been futile.<sup>1</sup>

We also reject the employer’s argument that claimant created the gravity of her situation by taking on duties that were not part of her job responsibilities. According to the employer, claimant’s job was to

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<sup>1</sup> See *Early v. Employment Department*, 247 OR App 321, 328, 360 P3d 325 (2015) in which a claimant told two managers she was resigning, because she felt she had no other choice after unsuccessfully attempting to resolve problems with a coworker for six months. The court noted that the managers “did not offer claimant any other alternative, suggesting there were none.”

sell places in the employer's senior living facility to prospective residents and their families, and the stress she experienced in the workplace resulted from her assumption of responsibilities that were not part of her job description, such as monitoring the conditions of the facility and handling complaints from residents and their families. Applying the provisions of OAR 471-030-0038(5)(f), we therefore examine claimant's actions to determine whether she had good cause for her conduct. On August 26, 2016, claimant responded to the angry complaint of a resident's daughter by notifying the employer's regional managers about the complaint and asking that they contact the daughter. Claimant's involvement in this situation occurred because of a lack of staff at the facility who could take any action on the complaint – there was no executive director or memory care coordinator, and no nurse on duty. Finding of Fact 7. Claimant's continuing attempts to notify the employer's managers about problems in the facility where she worked were motivated by the impact these problems had on her ability to perform her job. Claimant understandably found it difficult to convince residents to move into a facility that was poorly maintained and one which provided inadequate care to its residents. Based on this record, we conclude that a reasonable and prudent person who was assigned the duties claimant was assigned would conclude that problems in regard to the staffing and condition of an assisted living facility created a situation so grave that she had no reasonable alternative but to attempt to obtain resolution of these problems. Claimant therefore had good cause for her involvement in addressing the problems she found in the facility where she worked.

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits on the basis of this work separation.<sup>2</sup>

**DECISION:** Hearing Decision 16-UI-72422 is set aside, as outlined above.

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

**DATE of Service:** January 13, 2017

**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. 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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<sup>2</sup> Because we conclude that the stressful work environment claimant experienced provided good cause for her decision to voluntarily leave work, we do not address the other reason she gave for quitting her job – unfair pressure to meet sales goals.