

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1434**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140258). Claimant filed a timely request for hearing. On December 14, 2016, ALJ S. Lee conducted a hearing, and on December 16, 2016 issued Hearing Decision 16-UI-73116, affirming the Department's decision. On December 24, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Brookdale Senior Living, an assisted living facility, employed claimant from September 30, 2016 until October 17, 2016 as a care associate.

(2) Claimant's duties included assisting residents with daily living activities, including helping with grooming, getting residents to activities, removing trash from residents' apartments, doing residents' laundry, serving breakfast and lunch, and responding to residents' requests for assistance.

(3) Claimant spent the first week of her employment viewing training videos for the care associate position. In the videos that showed how to transfer a resident from one location to another, the residents depicted wore a belt for the care associate to hold on to while transferring the resident between a bed, wheelchair or toilet. Claimant believed from the videos and her experience as a care associate that she should use a transfer belt to transfer a resident safely.

(4) Claimant completed her training on October 10, 2016, and began assisting residents, including helping them with transfers. Claimant asked other care associates for a transfer belt to use while doing the transfers, and they told her that only one resident needed a transfer belt, and that her belt was in her room. That resident did have a transfer belt in her room. Claimant did not ask any managers or other superiors about the need for a transfer belt.

(5) Claimant was dissatisfied with having to serve breakfast and lunch because she had difficulty carrying the large trays used to carry and serve four plates of food to the four residents seated at each

dining room table. Claimant did not see any tray stands to use when serving the food and did not ask the employer if there was a tray stand available or if there was an easier way to serve the food. Claimant did not try to carry fewer than four plates per trip from the kitchen to the residents' tables.

(6) Before October 17, 2016, at a staff meeting, claimant's coworkers discussed that one resident was becoming more difficult to transfer. On October 17, claimant tried and was unable to transfer the resident, who did not have a transfer belt. Claimant requested assistance from another care associate with her walkie-talkie, and the other associate refused to help claimant and told her, "No, he can do it." Audio Record at 17:33 to 17:37. A physical therapist happened to arrive at that time and did the transfer. Claimant did not report the incident to a manager or other superior.

(7) On October 17, 2016, after claimant finished her shift, she quit work because she felt unable to perform the food service duties and believed the resident transfers without a transfer belt were unsafe. The administrator offered claimant an alternate position as a medical technician position in Wilsonville. Claimant refused the position because it was seven miles from her home, and paid less than she had earned from her previous employer.

**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 work because she felt unable to carry full food service trays and believed transferring residents without a transfer belt was unsafe. To the extent that claimant quit her job because she felt unable to carry full food service trays, she failed to show she had good cause for quitting work. Claimant did not ask how to modify the food service duties so she could perform them. A reasonable and prudent person would have alerted the employer that she needed training or alternatives to carrying a full tray before quitting a job due to duties she had performed for only one week. Claimant also asserted that the employer did not disclose to her in her interview that her duties would include dining room services, and that she would not have accepted the position had she known she would have such duties. Audio Record at 22:26 to 22:48. The employer was entitled to make business decisions regarding the type of duties claimant would be assigned. Although claimant was dissatisfied with her dining service duties, she did not show that they were unreasonable for a care associate. Moreover, the record does not show that the employer's failure to tell claimant at her interview that she would have dining service duties was so unfair that a reasonably prudent care associate would quit her job under such circumstances.

That claimant was unable to transfer a resident on October 17 without a safety belt, and that another care associate refused to help her, establishes by a preponderance of the evidence that claimant had legitimate concerns about the safety of some resident transfers. However, claimant failed to show that the facility's infrequent use of transfer belts or her coworker's failure to assist her left claimant no alternative but to quit her job when she did. Claimant did not discuss her safety concerns or her associate's failure to assist her with anyone in a supervisory capacity. Claimant had the reasonable alternative of discussing her safety concerns with a supervisor or the administrator. The record does not show that it would have been futile for claimant to do so, especially considering the care associates had already discussed difficulties transferring the resident from the October 17 incident at a recent meeting.

Because the record fails to show that no reasonable and prudent person, under the conditions claimant described, would have continued working for the employer for an additional period of time, claimant did not have good cause for quitting work when she did. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-73116 is affirmed.

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

**DATE of Service:** January 20, 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](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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