

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0138**

*Modified*  
*Disqualification effective Week 33-16*

**PROCEDURAL HISTORY:** On November 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111124). Claimant filed a timely request for hearing. On January 11, 2017, ALJ Kangas conducted a hearing at which the employer failed to appear, and on January 12, 2017, issued Hearing Decision 17-UI-74610, affirming the Department's decision. On January 31, 2017, 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) Oregon Coast Community Action employed claimant as a Head Start teacher from August 19, 2015 to August 16, 2016.

(2) Claimant had a contract to work for the employer to the end of the spring term on May 20, 2016. In February 2016, the employer asked claimant to perform some advocacy duties which she did not believe she was qualified to perform. After claimant brought her concerns to the employer, it did not require her to perform such duties and allowed her to continue working only as a teacher.

(3) Claimant heard from other teachers that being asked to return to work in the fall was not guaranteed. In March 2016, she submitted a letter of resignation to the employer to determine, indirectly, if the employer would ask her to return to work in the fall given her hesitancy to perform advocacy duties.

(4) In mid-May, a manager approached claimant and asked her if she would "consider" returning to work in the fall as a Head Start teacher to which claimant responded, "Yes, absolutely." Audio Record ~14:50 to 16:00. Thereafter, claimant continued to receive employer newsletters and planned on returning in the fall if asked by the employer.

(5) In June, 2016, claimant began attending school toward obtaining a Master's degree in Early Intervention. At that time, she believed she could both attend school and work for the employer as a Head Start teacher. However, around August 16, 2016, she determined that doing both would be unmanageable and decided she would not accept an invitation from the employer to work in the fall.

**CONCLUSIONS AND REASONS:** We agree with the ALJ, in part. We agree that claimant voluntarily left work without good cause, but conclude that she did so on or about August 16, 2016, and not May 20, 2016.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). "Work" means the continuing relationship between an employer and an employee. OAR 471-030-0038(1)(a). For a continuing employment relationship to exist, there must be some future opportunity for the employee to perform services for the employer. "[T]he date an individual is separated from work is the date the employer-employee relationship is severed." OAR 471-030-0038(2)(a).

In Hearing Decision 17-UI-74610, after finding that claimant quit after she submitted a "letter of resignation" to the employer in March 2016, not because she wanted to resign at the end of the school term on May 20, 2016, but "indirectly, to find out if the employer wanted her to return to work in August, 2016" the ALJ, nonetheless, concluded claimant quit work without good cause, effective May 20, 2016. Hearing Decision 17-UI-74610 at 1-4. We disagree.

While claimant did not dispute that she quit work, on this record, there is also no dispute that she had the future opportunity to perform services for the employer until approximately August 16, 2016, when she decided that she could not both work as a Head Start teacher for the employer during the fall term and attend school working toward a master's degree.<sup>1</sup> Although the employer had not formally asked claimant to return to work in the fall, that was still a possibility based on the manager's comments to claimant in May, and the fact that claimant continued to receive employer newsletters after May 20 demonstrated that the employer believed a continuing employment relationship still existed. Accordingly, because the employment relationship had not been severed as of May 20, 2016, and claimant was willing to continue to work for the employer up until August 16, 2016, the work separation was a voluntary leaving, effective that date.

A claimant who quits work is disqualified from the receipt of benefits unless she (or he) establishes by a preponderance of the evidence that she had good cause to quit 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

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<sup>1</sup> Claimant asserted that she made that determination at about the time she stopped claiming unemployment, in mid-August 2016. Audio Record ~ 20:40 to 22:00. The last date on which claimant claimed benefits during that summer recess period was August 15, 2016. We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

Or 605, 612, 236 P2d 722 (2010). Quitting work without good cause includes quitting work to attend school, unless required by law. OAR 471-030-0038(5)(b)(D).

Claimant quit work to attend school to obtain a master's degree in early intervention. Nothing in this record suggests that claimant was required by law to attend school for that reason. Accordingly, under OAR 471-030-0038(5)(b)(D), she voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits, effective the week of August 16, 2016 (week 33-16) until she has earned at least four times her weekly benefit amount in work in subject employment.

**DECISION:** Hearing Decision 17-UI-74610 is modified, as outlined above.

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

**DATE of Service: February 27, 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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