

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0262**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105521). Claimant filed a timely request for hearing. On February 8, 2017, ALJ S. Hall conducted a hearing at which the employer did not appear, and issued Hearing Decision 17-UI-76447, affirming the Department’s decision. On February 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he offered new information in the form of a medical summary from his physician and a statement from his mother to make up for his inability to offer evidence about the reasons he left work due to confidentiality restrictions in the voluntary separation agreement negotiated between him and the employer. However, claimant did not explain why he did not offer this new information during the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). As well, since claimant stated at hearing that the “situation” that culminated in his decision to leave work arose while he was away from work on FMLA leave, and was not apparently related to that medical condition for which the FMLA leave was approved, it does not appear that medical records relating to that condition are relevant or material to the determination of whether claimant did or not did not have good cause to leave work when he did. Audio at ~5:30; *see* OAR 471-041-0090(2)(a) (new information must be relevant and material to EAB’s determination). The statement from claimant’s mother does not appear to be based on first-hand knowledge about the incidents that caused claimant to leave work and is, as best, of only marginal relevance to the issues for which EAB’s review was sought. For these reasons, EAB did not consider the new information that claimant sought to present by way of his written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Oregon Health & Sciences University employed claimant as an animal technician in its primate center from February 9, 2015 until October 18, 2016.

(2) Sometime before October 18, 2016, claimant developed work-related allergies and was approved for a leave under the Family Medical Leave Act (FMLA). While claimant was away on leave, a “situation” developed which claimant thought created a “hostile work environment” for him and resulted in “defamation” of his character. Audio at ~5:30. Claimant’s contacted his union. The union intervened on claimant’s behalf and negotiated a resolution that allowed claimant to voluntarily leave work on “good terms” and would not jeopardize future job references the employer would provide for claimant. Audio at ~6:14. The separation agreement which claimant signed stated that the “details [of the incident(s) that led to claimant’s separation] would never be discussed.” Audio at ~6:26.

(3) On October 18, 2016, claimant voluntarily left work pursuant to the separation agreement negotiated with the employer. Claimant provided no specific information about the “situation,” the “hostile work environment” or the “defamation” that led him to leave 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 he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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.

Although the employer did not appear at hearing, the employer had agreed not contest claimant’s claim for unemployment insurance benefits, and claimant was apparently prohibited by the work separation agreement from discussing the reasons he decided to leave work, those circumstances do not relieve claimant from presenting sufficient specific facts to demonstrate by a preponderance of the evidence that grave reasons caused him to leave work and that he had good cause for doing so. Claimant did not present any specific information about why he left work. The employer’s failure to challenge claimant’s claim for benefits and the confidentiality provisions of the separation agreement cannot and do not operate to demonstrate that claimant is not disqualified from receiving benefits under employment laws and regulations. Given this failure of proof, claimant did not show that he had good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-76447 is affirmed.

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

**DATE of Service:** March 29, 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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