

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0325**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84514). Claimant filed a timely request for hearing. On March 8, 2017, ALJ Murdock conducted a hearing, and on March 10, 2017 issued Hearing Decision 17-UI-78678, affirming the Department's decision. On March 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not offered into evidence during the hearing, did not explain why she was unable to present the information at that time or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. She also failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Accordingly, under ORS 657.275(2), OAR 471-041-0080 and OAR 471-041-0090, EAB only considered the hearing record and the employer's written argument when reaching this decision. Pursuant to ORS 657.275(2), EAB performed a *de novo* review of the entire hearing record, including the exhibits.

**FINDINGS OF FACT:** (1) Tonya's House Inc., a residential foster home for troubled girls, employed claimant as a staff member from January 27, 2014 through January 4, 2017.

(2) In early 2016, the employer's executive director (ED) began her job with the employer. At that time, the employer's Board of Directors requested that she "get employees back on track, following policies and procedures, and behaving in a more professional manner in the workplace. And a special concern was "[potential HIPAA violations] that were happening through [] gossip." Transcript at 24.

(3) On or about December 21, 2016, a staff member sent a group text message to other staff members that some resident girls had told her and claimant that morning that one particularly troubled girl that had lived at the foster home in the past was coming back, which was a surprise, and upsetting because the staff member had not heard that from the ED, and she had gone through past counseling regarding

that particular girl. The ED then messaged back “how the hell do [you] know this?” Claimant messaged back that the residents had reported that the information came from a named staff member, who later became upset at reading the message and denied that it was true. Transcript at 6. In response to claimant’s text, the ED texted, “you guys will not be scapegoating [the named staff member]”. Transcript at 6.

(4) A short time later, the ED came to the resident home and demanded an immediate “come to baby Jesus meeting” with staff members and residents. Transcript at 8. During the meeting, the ED asked a resident, reportedly the source of the report, and who had been accused of fabricating information in the past, where she obtained her information. The resident then accused the ED of giving it to her, to which the ED angrily responded, while pointing a finger at her “You’re a filthy liar.” Transcript at 8. After claimant said to the ED, “this is not right to just sit here and point the finger at one person, because it wasn’t just her who said it...”, the ED responded, “And for you [claimant] I am sick of you attacking staff... you will not do that.” Claimant then said, “You know what...how about this, I put my two weeks’ notice in today.” Transcript at 8.

(5) On January 4, 2017, claimant quit work with the employer due to what she considered her “hostile conversation” with the ED on December 21, 2016. Transcript at 4-5.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

As can best be discerned from the record, claimant decided to leave work because she was upset with the tone and manner in which the ED spoke to her during the December 21, 2016 meeting between claimant, the ED, other staff members and residents. Although claimant was presented with frustrating circumstances at the meeting, viewed objectively, she was not left without reasonable alternatives to quitting when she did. Claimant acknowledged as much when she told the ED on her final day, “You know, I might have been hasty.” Transcript at 27. She could have discussed the issue with the ED in private after the meeting to vent her own frustrations or attempted to reach a mutual understanding with her regarding what had occurred from each party’s perspective. If she believed the ED’s conduct toward her would be a continuing issue, she could have reported the ED’s conduct to the Board of Directors, with the hope of resolving the problem with its intervention. On this record, claimant did not demonstrate that those alternatives would have been futile and therefore unreasonable and that no reasonable and prudent person in her circumstances would have pursued them rather than abruptly quit out of frustration.

Claimant failed to meet her burden to demonstrate that no reasonable and prudent staff member in her circumstances would have continued to work for the employer for an additional period of time. Accordingly, she is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 17-UI-78678 is affirmed.

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

**DATE of Service:** April 11, 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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