

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0349**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112811). Claimant filed a timely request for hearing. On March 1, 2017, ALJ Monroe conducted a hearing, and on March 3, 2017 issued Hearing Decision 17-UI-78152, affirming the Department's decision. On March 20, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the version of claimant's written argument received April 10, 2017 when reaching this decision because it was timely and complied with the requirements of OAR 471-040-0080 (October 29, 2006). EAB did not consider the written argument claimant included with his application for review, however, because, although it was timely, he did not certify that he provided a copy of it to the employer as required OAR 471-041-0080(2)(a). Even if we had considered the written argument that accompanied claimant's application for review the outcome of this decision would remain the same because that argument was duplicative of both claimant's testimony and his April 10, 2017 argument.

**FINDINGS OF FACT:** (1) Johnson Crushers International, Inc. employed claimant from November 28, 2016 to December 5, 2016.

(2) Claimant understood from the initial interview and orientation with the employer's production manager that his job duties would be to do electrical wiring on trailers used to transport rock crushers and build electrical back panels in the employer's electrical panel shop department. Claimant did not have an Oregon State electrician's license, but believed he could perform the wiring if he worked under the supervision of a licensed electrician.

(3) On November 30, 2016, claimant learned that the employer would not permit him to do AC wiring because claimant did not have an Oregon State electrician's license, and that he would be conducting quality control testing of rock crushers instead. Claimant had no experience testing rock crushers.

(4) On December 1, 2016, claimant's coworker began training claimant regarding the rock crusher testing procedures. Claimant received eight hours of training regarding the preliminary procedures required before the final testing. Claimant took notes of the information provided to him. During the training, the coworker told claimant that he would prefer not to train claimant and that he "hated" training claimant "from scratch." Transcript at 17-18, 25. Claimant expressed concern to his supervisor about his job duties because he had no experience with rock crushers and requested operational literature regarding the rock crushers so he could spend personal time learning about the rock crushers. The supervisor did not tell claimant he was prohibited from using personal time to perform work, and provided claimant with an operational, service and parts manual for the rock crusher. Exhibit 1 at 8.

(5) While he was off work on December 2 through 4, 2016, claimant reviewed the operation, service and parts manual and his notes from December 1. Based on his review of the information and his prior experience, claimant decided he was not qualified to test rock crushers for the employer, that it would be a "huge learning curve" for him to learn how to test the rock crushers, and, while he might have been willing to learn the job 15 years prior, he did not want to learn a new career at that point in his life. Transcript at 24.

(6) The employer had planned to provide claimant with four to six weeks of in-house training regarding his assignment. The employer did not require claimant to use personal time to learn how to perform his job duties.

(7) On December 5, 2016, claimant resigned because he considered the work unsuitable based on his experience, he did not want to dedicate personal time to learning new skills for work, and he felt uncomfortable being trained by a coworker who disliked training him.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude 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). 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.

Claimant quit work one week after being hired because he considered his job to be unsuitable. In applying OAR 471-030-0038(4), leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). In determining whether any work is suitable for an individual, the Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, and the distance of the available work from the residence of the individual. ORS 657.190.

In the present case, claimant left work to search for other work because he considered his work assignment to be unsuitable. Although the work assignment was different than what claimant understood his duties would be at hire, claimant did not show by a preponderance of the evidence that the work was unsuitable according to the factors provided by ORS 657.190. Claimant did not assert, and the record does not show, that the quality control position posed a risk to claimant's health, safety or morals. Nor does the record show that claimant was physically unable to perform the job, or that the distance of the work or earnings were problematic for claimant. Claimant's objection to the work was that he did not have experience performing the specific job duties assigned to him when he quit, he did not want to learn the new duties, and he thus considered himself to be unqualified for the work. However, the employer planned to provide claimant four to six weeks of training for those job duties. The record does not show if claimant knew when he quit that the employer planned to provide him that training. However, claimant had the reasonable alternative of asking the production manager or other supervisor about the training it planned to provide before he quit. Thus, although claimant lacked the requisite experience to perform the work unassisted at the time he quit, claimant did not show the work was unsuitable based on his experience because he did not show he lacked the capacity based on his experience and training to learn the job duties from the employer. Moreover, although it is understandable that claimant felt uncomfortable receiving training from a coworker who "hated" providing the training, at the time claimant quit, the record does not show that the coworker's attitude created a grave situation for claimant based on how he treated claimant, the quality of the training, or other factors. Finally, claimant asserted that he "didn't want to donate [his] time at home, [his] weekends" to educate himself regarding the equipment he would be testing at work. Transcript at 19. Although claimant's supervisor did not direct claimant to refrain from using personal time to complete work-related education when claimant mentioned his voluntary intention to do so, nor did the employer require claimant to dedicate personal time to learn how to perform his job duties, and, in the end, beyond asking his supervisor for a manual to study, claimant did not approach the supervisor or another manager about that, or any of his other concerns, nor did he show doing so would have been futile.

The record does not show that the work claimant could have performed for the employer in his current position was unsuitable. We therefore conclude that claimant quit suitable work to search for other work, which is quitting work without good cause under OAR 471-030-0038(5)(b)(A), and he is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 17-UI-78152 is affirmed.

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

**DATE of Service:** April 10, 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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