

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0971**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73923). Claimant filed a timely request for hearing. On July 20, 2017, ALJ Monroe conducted a hearing, and on July 28, 2017 issued Hearing Decision 17-UI-89123, affirming the Department's decision. On August 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, EAB considered the entire record, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Suterra LLC employed claimant as a chemical systems operator in the employer's chemical plant from February, 2011 to June 8, 2017.

(2) Claimant worked with a team of one or two coworkers. Claimant's team alternated every four months between working a 12-hour shift beginning at 5:00 a.m. and a 12-hour shift beginning at 5:00 p.m. The employer's policy required all of its twelve chemical systems operators to alternate shifts, despite the employees' preferences for day or graveyard shifts. The employer informed claimant of its policy when it hired claimant.

(3) Beginning in 2016, claimant began having difficulty sleeping during the day after working the graveyard shift, and was not able to sleep more than three hours per day. Claimant tried to sleep more during the day by sleeping in a camp trailer outside his home with dark curtains drawn, using eye coverings and ear plugs, and taking allergy medication to induce sleep. Claimant was still not able to sleep more than three hours. On occasion, he was unable to sleep at all.

(4) Despite consuming caffeine while working, and as a result of his lack of sleep, claimant was not alert at work, would struggle to stay awake, and would sometimes inadvertently fall asleep briefly while he was working. Claimant became concerned about safety because he worked in a chemical plant and was

unable to focus properly on work procedures and documents he had to read, and made potentially dangerous mistakes. Claimant felt his quality of life deteriorated and he gained approximately 35 pounds during the last four months he worked graveyard.

(5) In approximately June 2016, claimant began looking for other work outside Suterra LLC. Claimant also applied for other positions with the employer that worked day shifts. The employer did not offer claimant any of those positions.

(6) In January 2017, claimant had a performance review. The employer was satisfied with claimant's work performance. Claimant told the employer's vice president of operations about his difficulties due to lack of sleep while working graveyard shift. The vice president, who was the employer's highest-ranking employee since May 2016, did not offer claimant any alternatives to working the graveyard shift or otherwise respond to claimant's concerns.

(7) During the first week of April 2017, claimant told the employer's vice president that he was physically unable to continue working graveyard shift and that the lack of sleep was causing him to make mistakes at work and to have serious concerns about his safety at the chemical plant. The vice president told claimant there were no day shift positions available and did not offer any other solutions to address claimant's concerns.

(8) On April 23, 2017, claimant gave the employer notice that he was not able to continue working for the employer unless the employer assigned him to work day shifts, and that his last day of work would be June 9, 2017.

(9) Two weeks after claimant submitted his resignation, claimant met with the employer's human resources generalist and told her about his difficulties working the graveyard shift. Human resources did not offer claimant an alternative to his planned quit on June 9, 2017, and told him to discuss his concerns with the vice president.

(10) The employer had no other locations. The employer's parent company had other chemical plants in California. The employer had never before assigned a chemical systems operator to work one shift exclusively, rather than alternate between day and night shifts.

(11) Claimant did not seek medical advice until after he left work. His symptoms improved when he returned to day shift and after he left work.

(12) On June 8, 2017, claimant voluntarily left work because he was unable to obtain sufficient sleep during the day when he worked graveyard shift, causing him to make mistakes at work that could affect workplace safety, and affecting his health.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude that claimant voluntarily left work with good cause.

To qualify for unemployment benefits, claimant must prove that he quit work for good cause. 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) (November 1, 2009).

In Hearing Decision 17-UI-89123, the ALJ concluded that claimant voluntarily left work without good cause, reasoning that claimant had the reasonable alternatives of reporting his concerns to the employer’s human resources generalist and requesting reasonable accommodations in the workplace, consulting a health care provider for medical advice and treatment regarding his sleeplessness, or continuing to work until he obtained a different position with the employer or another job.<sup>1</sup> We disagree that these were reasonable alternatives to leaving work.

Claimant’s inability to sleep during the day when he worked the four-month periods of graveyard shift caused claimant to experience health problems such as significant weight gain and sleeplessness, and to make errors at work such that he became reasonably concerned about workplace safety. Claimant tried to facilitate sleep by creating an environment at home that was conducive to sleep, and used allergy medication to induce sleep at home and caffeine to stay awake at work. Despite these efforts, claimant was unable to sleep more than three hours per day while working graveyard shifts. These concerns created a grave situation for claimant.

Claimant reported his health concerns to the employer’s vice president of operations and was given no alternative to pursue. Although claimant did not discuss his concerns with human resources until after he tendered his resignation, claimant did tell human resources about his concerns approximately a month before his planned resignation date, and the human resources generalist did not discuss alternatives with claimant other than recommending that he discuss his concerns with the vice president, which claimant had already done without results. Moreover, the employer’s witness testified that it was “probably unlikely” that the employer would have made an exception to its “burden sharing” policy requiring all chemical systems operators to rotate through the graveyard shift, because the employer also had the policy in place to address its own business needs to avoid employees’ complacency at work. Audio Record at ~ 34:55.

We disagree with the ALJ that claimant’s health and safety concerns were not so grave that continuing to work while looking for outside work was a reasonable alternative. Although claimant did not seek medical advice until after he left work, we infer from his symptoms that he was experiencing, at minimum, a sleep disorder that negatively affected his health. Claimant began looking for other work in 2016, and applied for day shift positions with the employer, and was not offered those positions. Additionally, according to the employer’s human resources generalist, the likelihood of securing another position with the employer was negligible because the employer was small, had a limited number of positions, and the positions were specialized and required skills sets that claimant did not possess. Audio Record at ~ 33:16. Nor do we find that seeking medical advice was a reasonable alternative for claimant, because he had already unsuccessfully attempted using medication, albeit nonprescription, and controlling his exposure to light to correct his apparent sleep disorder.

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<sup>1</sup> Hearing Decision 17-UI-89123 at 3.

For the foregoing reasons, we conclude that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not continue to work under claimant's circumstances at work at the time he quit. Claimant had good cause for leaving work, and is not disqualified from receiving unemployment insurance benefits based on his work separation.

**DECISION:** Hearing Decision 17-UI-89123 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** September 5, 2017

**NOTE:** This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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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