

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1081**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 151540). The employer filed a timely request for hearing. On August 17, 2017, ALJ Shoemake conducted a hearing at which claimant did not appear, and on August 25, 2017 issued Hearing Decision 17-UI-91198, concluding that claimant quit working for the employer without good cause. On September 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted written argument in which offered new information for EAB's consideration that she did offer into evidence at the hearing due to her failure to appear. OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider new information only if the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented the party from offering that information at the hearing. In her written argument, claimant stated that she did not appear or present information at the hearing "based on my understanding that you would have all relevant documents and facts I previously shared with the Unemployment Office."

However, the Notice of Hearing, mailed to claimant on July 27, 2017, plainly stated that the ALJ would make a decision based only on the evidence presented during the hearing, and also stated in two separate places that the only documents that ALJ would consider when reaching her decision were those documents, if any, that were enclosed with the Notice of Hearing or were provided to the ALJ and the other parties in advance of the hearing. Notice of Hearing at 1, 6. It was within claimant's reasonable control to have carefully read the Notice of Hearing and, based on its language, to have understood that the ALJ would not consider documents simply because claimant had provided them to the Department. For this reason, claimant did not show that her failure to appear at the hearing and present evidence was caused by a circumstance beyond her reasonable control. Claimant's request for EAB to consider her new information therefore is denied.

**FINDINGS OF FACT:** (1) New Seasons Market, LLC employed claimant as a cashier from August 12, 2015 until December 30, 2016. The employer had eighteen stores in the Portland, Oregon area and some stores in Northern California.

(2) Sometime around late October 2016, claimant notified the employer that she intended to resign effective November 29, 2016 to relocate to Northern California. Claimant told the employer that one of its California stores was located within 30 minutes of where she intended to reside in California.

(3) Sometime before November 29, 2016, the employer agreed to place claimant on a 30 day leave of absence for the purpose of allowing her to apply for work during that 30 day period as an “internal employee” at the employer’s stores in California. An internal employee held a preferential position over other applicants in the employer’s hiring process. The employer did not agree to transfer Claimant to one of its California stores. The employer told claimant that after 30 days, or on December 30, 2016, her status of being considered on a leave or as an internal employee for hiring purposes would end.

(4) Sometime around December 20, 2016, claimant contacted the employer and stated that she did not like living in California and had returned to Oregon. At that time, the cashier position that claimant had vacated in one of the employer’s Portland stores was filled. Claimant applied for other open cashier positions in three of the employer’s other stores in Portland, but was not hired for any of them. Although the employer had positions other than cashier positions available at its stores in Portland, claimant did not apply for them because she only wanted to work as a cashier.

(5) On December 30, 2016, the 30 days period the employer had given claimant to be considered an internal employee for hiring purposes ended.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant’s work separation. If claimant could have continued to work for the employer for an additional period of time when the work separation occurred, the separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

In this case, the evidence shows that claimant initially intended to resign effective November 29, 2016, but the employer offered to keep her on in a nominal status as an employee for 30 days in order to assist her in securing new employment with the employer’s stores in California as an “internal employee.” The record shows that the employer did not intend to do more than to help claimant for 30 days, and did not intend by its offer to reject claimant’s resignation, but only to delay claimant’s complete severance of the employment relationship for 30 days, or until December 30, 2016. It is settled that where a claimant has expressed an intention to resign and, as here, the employer and claimant have subsequently and mutually agreed on a termination date, the work separation is characterized as a voluntary leaving. *Employment Department v. Shurin*, 154 Or App 352, 959 P2d 637 (1998); *J. R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990). Claimant’s work separation therefore was a voluntary leaving as of December 30, 2016.

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

Claimant quit work on December 30, 2016 because she was not allowed to continue working for the employer as a cashier, did not want to work for the employer in another position, and therefore did not apply for other available positions. However, the record fails to show that working for the employer in another position created a grave situation for claimant, or that applying for other available positions likely would have been futile. The record therefore fails to establish that claimant quit work with good cause. Claimant therefore is disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 17-UI-91198 is affirmed.

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

**DATE of Service:** October 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.