

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0086

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141109). Claimant filed a timely request for hearing. On January 16, 2018, ALJ S. Lee conducted a hearing, and on January 18, 2018 issued Hearing Decision 18-UI-101213, affirming the Department's decision. On January 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Clackamas View Senior Living employed claimant as a medication technician (med tech) from September 15, 2016 until November 5, 2017. Claimant usually worked the swing shift, from 3:00 p.m. until 11:00 p.m.

(2) Throughout claimant's employment, two caregivers and one med tech were scheduled for day shifts. Until late February 2017, the employer scheduled only one caregiver and one med tech for swing shifts. In late February 2017, the employer adjusted its staffing to take account of the increased needs of its resident population and scheduled two caregivers and one med tech for swing shifts. In late March 2017, the employer again adjusted its staffing ratios for swing shift because the population of high need residents had declined in number, and resumed scheduling one caregiver and one med tech for swing shifts. When only one caregiver was scheduled for swing shifts, the med tech who was also scheduled needed to assist that caregiver in performing tasks that required two people, such as transferring or lifting certain residents.

(3) Sometime around or after approximately November 2017, the employee who was scheduled to work on swing shift as the single caregiver when claimant worked as the med tech was not scheduled to begin work until 4:00 p.m. During the hour of swing shift when there was no caregiver on duty, from 3:00 to 4:00 p.m., claimant was required to provide the hands-on care for the residents as well as to perform her duties as med tech. Claimant felt "overwhelmed" during that hour when there was no caregiver on duty, and also felt overwhelmed when the caregiver was present because she needed to provide assistance to the caregiver in addition to performing her duties as med tech. Audio at ~11:30, ~21:25, ~23:54.

Beginning in approximately November 2017, claimant told the employer's executive director on many occasions that she was overwhelmed by the caregiving duties she was required to perform during swing shifts in addition to her duties as med tech and asked that the employer schedule more caregivers on swing shift. The executive director told claimant that, "she was working on it [arranging additional staffing]." Audio at ~36:34. However, the swing shift staffing never changed. Claimant did not complain to the employer's regional director of operations about the swing shift staffing because she thought the executive director "had it covered" and because she misunderstood that other employees had already complained to the regional director about the staffing and that the regional director "was [also] working on it [getting more swing shift staffing]." Audio at ~16:32, ~19:52. However, other employees had not complained about staffing to the regional director.

(4) On November 4, 2017, claimant was assigned to work the swing shift beginning at 3:00 p.m. At that time, the employer had 18 residents in the facility. On that day, claimant did not observe the single caregiver assigned to work along with her at or around the 4:00 p.m. start of his shift. Claimant did not observe the caregiver providing care to the residents until sometime around 5:00 p.m. From 3:00 p.m. until 5:00 p.m., claimant was occupied providing hands-on care to the residents rather than providing med tech services to them. Claimant was very displeased that she had been required to provide those caregiving services.

(5) On November 5, 2017, claimant sent a text message to the executive director informing her that she was quitting work as a result of what had happened on November 4, 2017. Claimant described the caregiving tasks she had been required to perform, stated that the day had been "overwhelming" for her, that she had reached her "breaking point" and that, "I just don't get paid enough for it **** [and] I have to do what's best for me." Exhibit 1 at 7.

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

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.

While claimant repeated testified that she was "overwhelmed" by the hands-on caregiving tasks she was often required to perform due to the employer's staffing of only one caregiver on swing shift and, specifically, the caregiver's late arrival on November 4, 2017, her description did not indicate that either constituted a grave situation. Audio at ~11:30, ~20:24, ~21:25. Aside from saying that she felt "overwhelmed," claimant did not specify the negative impacts that accrued to her or to the residents from her performing caregiver tasks in addition to med tech duties or describe concrete harms to her or the residents that resulted from her having to do so. Although claimant might have subjectively felt overwhelmed, this record is insufficient to show that a reasonable and prudent med tech under similar

circumstances would have felt similarly overwhelmed or would have concluded that, as a result, her situation was so grave that she could not continue working for the employer.

Moreover, claimant also did not show that she pursued reasonable alternatives before deciding to leave work. Although claimant asked the executive director about additional staffing for the swing shift, she conceded that she did not notify the executive director that she was considering leaving work due to the employer's swing shift staffing ratios. Claimant did not demonstrate that what she told the executive director when she suggested the employer obtain additional swing shift staffing should reasonably have notified the executive director that the situation was grave or that claimant viewed it as grave. On this record, claimant did not meet her burden to show that giving the executive director a further opportunity to rectify the swing shift staffing ratios, after making the executive director aware of its perceived gravity, would have been futile. As well, while claimant contended that she did not raise her staffing concerns with the regional director of operations because claimant understood that other employees had already complained to the regional director about that staffing with no results, the regional director denied that any employees had made any complaints to her. Audio at ~28:05. In light of the regional director's denial, and absent evidence that undercuts the regional director's credibility or the accuracy of her testimony, claimant did not meet her burden to establish that the regional director was aware that employees had grave concerns over the employer's staffing ratios, that the regional director was unwilling to try to rectify the perceived understaffing and that it would have been futile for claimant to have sought to redress that understaffing through action by the regional director. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). On this record, claimant did not show that she pursued reasonable alternatives before deciding to leave work when she did.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 18-UI-101213 is affirmed.

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

DATE of Service: February 27, 2018

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. 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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