

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0102

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 131447). Claimant filed a timely request for hearing. On January 25, 2018, ALJ Lewis conducted a hearing at which the employer did not appear and issued Hearing Decision 18-UI-101763, affirming the Department's decision. On January 29, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oldcastle employed claimant as an accounts payable clerk from November 2, 2017 to November 14, 2017.

(2) When claimant arrived at work on her first day, she did not have with her a voided check necessary for setting up the direct deposit of her paycheck, or her social security card necessary to establish her authorization to work. The employer's office manager sent her home to obtain those documents and, later, did not pay her for her time in doing so because she had not yet completed the paperwork necessary to begin work. The office manager told claimant that the corporate office should have notified her to bring the necessary documents.

(3) Claimant's worksite was the employer's Wilsonville office, where approximately fifteen people worked. The office had a conference room with a large conference table that also served as the break room and was equipped with a microwave oven, refrigerator, dishwasher and sink. The office also had a single stall bathroom used by all employees. Employees were expected to, but did not always, clean up after themselves after using the break room or the bathroom.

(4) When claimant began performing her payroll duties, she was assigned a trainer, the payroll clerk, to help her. The office manager was also available in the office to help claimant during claimant's first week if claimant needed assistance. However, claimant found that both the office manager and payroll clerk were very busy performing their own jobs and claimant believed that she was not given adequate training. She also learned that the employer was opening a new office in a nearby community and that

much of the staff was involved in setting up the new site. Despite that issue, claimant concluded that the work environment was very disorganized.

(5) Early on November 13, 2017, the office manager told claimant that she was being assigned to perform additional duties previously performed by the office manager. The manager told claimant that she would be expected to vacuum the reception area and clean both the break room and the bathroom. The manager showed claimant the tools she would need to perform the tasks and told her the expected frequency of performing the break room and bathroom cleaning duties was daily. After claimant told the manager that such work was not included in her job description, the manager responded that the description included a provision that the clerk also was expected to perform “other duties . . . as needed”, which claimant did not dispute. Audio Record ~ 10:00 to 12:00. Claimant found the duty of cleaning the bathroom to be particularly unpleasant, as she considered the bathroom to be “disgusting” and “gross” even to use, as urine was often visible on the floor and toilet seat and bathroom odors often emanated from the room, which was next to where she would be working. Audio Record ~ 21:00 to 22:45.

(6) On November 14, 2017, claimant came to work as scheduled and the office manager was off site. About halfway through her work day, claimant sent the manager an email notifying her that she was quitting immediately, to accept another position, although she had no other job lined up. Claimant quit because she believed she had not been given adequate training, the work environment was disorganized and she was required to perform cleaning duties. Claimant would not have quit when she did had she not been assigned the cleaning duties.

CONCLUSIONS AND REASONS: We agree with the 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.

Claimant quit work because on November 13, 2017, she was told that she had been assigned cleaning duties in addition to her duties as a payroll clerk. Claimant explained that she had already regretted accepting the job after the first week because she had concluded it “wasn’t going to be a good fit” for various reasons, but being assigned the cleaning duties was “the cherry on the cake” because she could not make herself do it. Audio Record at 22:30 to 24:30. Although the circumstances described by claimant may have been unpleasant, she did not assert or show that she attempted to perform the additional job duties even one time or that she made an attempt to mitigate or modify those duties by discussing her difficulty with performing them with her supervisor. Although claimant may have believed she could not perform the duties in question, her belief was based on speculation. She did not assert or show she was not physically qualified for or lacked sufficient training to perform the work in

question and did not present persuasive evidence that her job duties reasonably posed a risk to her health, safety or morals. Claimant would have continued to work at the same location and would not have experienced a reduction in pay. Therefore, under the factors and exceptions set forth in ORS 657.190¹, claimant failed to show that her job, even with the additional duties that were assigned to her, was not a suitable position. Viewing the record as a whole, claimant failed to show that her concerns constituted reasons of such gravity that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time rather than quit immediately without discussing the issue with her employer.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she requalifies for benefits by earning at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 18-UI-101763 is affirmed.

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

DATE of Service: February 28, 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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¹ Under ORS 657.190, factors to consider when determining whether work is “suitable” include, in pertinent part, “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, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.”