

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0175

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 155155). Claimant filed a timely request for hearing. On January 30, 2018, ALJ Amesbury conducted a hearing, and on February 1, 2018 issued Hearing Decision 18-UI-102200, affirming the Department's decision. On February 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) First Student Management LLC employed claimant from 2015 until November 14, 2017 as a bus driver.

(2) Claimant had worked as a bus driver for more than 17 years. Claimant had also recently completed studies to be a pastry chef and wanted to open her own bakery.

(3) At hire, the employer told claimant she would have as many hours as she wanted. Claimant wanted to work at least five or six hours per day. The first week claimant worked, the employer gave claimant three hours of work per day. Claimant complained to the employer and was told that she was the only qualified driver for the special needs route, and that the employer needed her to drive that route, three hours per day, for her first two weeks. Although the employer subsequently switched claimant's route, gave her extra work washing buses, and twice gave claimant 8-hour days, claimant usually worked three hours per day. Claimant's hours were split between the morning and mid-day, so she had to commute to work twice per day. Claimant was dissatisfied with the low number of hours. Claimant earned \$18.70 per hour.

(4) Claimant experienced stress from work because the buses sometimes had mechanical problems, the employer would make last-minute changes to her route, and the bathrooms did not have toilet paper. On October 31, 2017, claimant gave the employer notice that she would leave work on November 14, 2017.

(5) On November 14, 2017, claimant voluntarily left work with the employer because she was dissatisfied with her working conditions, including the number of hours she worked per week. Claimant also quit work to open her own bakery and, in the meantime, to look for work that would help her prepare to open a bakery.

CONCLUSION AND REASONS: We agree with the Department and 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 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. Quitting work without good cause includes leaving suitable work to seek other work and quitting for self-employment. OAR 471-030-0038(5)(b)(A), (G).

Claimant quit work for a variety of reasons, including that she felt stress from her work environment, was given too few hours, wanted to seek other work related to opening her own bakery, and wanted to engage in self-employment by preparing to open a bakery. Whether considered individually or collectively, claimant did not show good cause for quitting work for those reasons, as explained herein.

To the extent claimant left work because she experienced stress from working conditions such as mechanical problems with the buses, last-minute changes to her schedule, and lack of toilet paper in the bathroom, claimant did not show that her working conditions caused so much stress that it was a risk to her health to continue working. Nor did claimant show that her working conditions otherwise created a situation of such gravity for claimant that she had no reasonable alternative but to leave work when she did.

To the extent claimant quit work because the employer did not give her as many hours as she wanted with two shifts of 1.5 hours each per day, claimant did not show she had good cause to quit. Claimant’s situation was analogous to an hourly employee who quits due to a reduction in hours. OAR 471-030-0038(5)(e) provides that if an individual quits work due to a reduction in hours, she has quit work without good cause unless the cost of working for the employer exceeds the amount of remuneration received or continuing to work substantially interferes with her return to full time work. Claimant did not assert, and the record does not otherwise show, that the cost of working for the employer exceeded the amount of remuneration claimant received for work, or that continuing to work substantially interfered with claimant’s return to full time work.

Claimant also left work to seek other work that related to her goal of opening a bakery. OAR 471-030-0038(5)(b)(A) provides that leaving work without good cause includes leaving suitable¹ work to seek

¹ ORS 657.190 provides: “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, the length of unemployment and prospects for securing local

other work. Having considered claimant's description of her working conditions, including the factors that caused her stress, her experience as a bus driver and earnings, we conclude that claimant's work with the employer was, at the time she quit work, suitable, and that to the extent she left that job to seek other work, she left without good cause. Moreover, to the extent claimant quit work to start her own business, her quit was without good cause under OAR 471-030-0038(5)(b)(G).

For the foregoing reasons, we conclude claimant voluntarily left work without good cause. Claimant is therefore disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 18-UI-102200 is affirmed.

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

DATE of Service: March 20, 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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work in the customary occupation of the individual and the distance of the available work from the residence of the individual.”