

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0202**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 102027). Claimant filed a timely request for hearing. On January 19, 2018 and February 6, 2018, ALJ Wyatt conducted a hearing, and on February 14, 2018 issued Hearing Decision 18-UI-103288, affirming the Department's decision. On February 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY ISSUES:** The ALJ did not administer an oath or affirmation to the employer's witness before testimony. Because the accuracy of that witness's testimony and credibility as a witness do not appear to be at issue, we have considered that witness's testimony as true and accurate to the best of the witness's knowledge. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. Unless such objection is received and sustained, the testimony of that unsworn witness will remain in the record.

In Hearing Decision 18-UI-103288, the ALJ wrote that Exhibits 1 through 3 were admitted into the record. Upon reviewing the record, we determined as follows: Exhibit 1 was properly marked; the documents described as Exhibit 3 were erroneously marked as Exhibit 2; and Exhibit 2 was not marked. We were, however, able to identify all three exhibits and correlate them to the ALJ's description of them during the hearing, and we considered the contents of all three exhibits when reaching this decision.

**FINDINGS OF FACT:** (1) Salem-Keizer Public Schools employed claimant, last from October 2, 2017 to October 3, 2017. Claimant had previously worked for the employer, and wanted to secure permanent full-time employment with the employer.

(2) Prior to October 2, 2017, the employer asked claimant to attend an interview for a senior clerical support job opening. Claimant accepted the interview, which was scheduled for October 5, 2017.

(3) After claimant accepted the interview, the employer offered claimant a permanent, full time position as a special programs employment specialist. The position description included as part of its minimum qualifications that the job required “[t]echniques and methods of student supervision and management in settings involving students with moderate to severe learning, physical and emotional disabilities, and social/behavior problems, “[a]daptations and modifications of work settings,” and the ability to “[w]ork effectively with high school age students with special needs , in large and small groups as well as one-on-one training.” Exhibit 1. The work environment included travel and a “[c]limate controlled office or classroom settings.” *Id.* Claimant accepted the job, and canceled her interview for the other job.

(4) When claimant accepted the position she expected to be based out of the employer’s district offices or a student services building, and travel throughout the district scheduling work study and internships for students. She knew that she would be working with some community transition program students, but thought she would also work with other student populations. When claimant reported to work for her first day on October 2, 2017, however, she learned that the employer planned to primarily place her in a modified classroom in a 2-bedroom apartment located away from the employer’s district offices, student services buildings, and schools. Upon touring the site, claimant also learned that her desk and a bed shared one of the apartment’s bedrooms. Claimant learned that she would primarily work with community transition program students aged 16 to 22 years old learning life skills and hygiene, work approximately four hours each day from the apartment, and would often be alone with the students. Claimant talked to her supervisor and the other employment specialist to “voice[] my concerns about what I was learning about the project and that position and my concerns moving forward.” January 19, 2018 hearing, Transcript at 23. She felt the supervisor “didn’t have anything to say.” *Id.* at 15.

(5) Claimant was qualified for the work based upon her employment history and the training the employer planned to provide to her, but she did not feel comfortable with the apartment setting, her desk’s location in a bedroom with a bed, the age of the students, or the severity of the students’ disabilities and potential behavioral issues. She felt that the students could pose a risk to her safety, and felt that her inexperience dealing one-on-one with that student population meant that she was ill-equipped to deal with the students or any issues that might arise with them. Claimant felt that she was “out of my element” and did not want to keep the job. *Id.* at 12.

(6) After her October 2, 2017 shift claimant learned that she was going to be left alone with students at the apartment classroom the following day, and felt she was not adequately trained to handle that. She called human resources because she “wanted to make sure that I was back on the list for that interview” for the senior clerical support position. February 6, 2018 hearing, Transcript at 22. Claimant was told that she was not eligible to interview for the other position while employed, since she had not completed her six-month new-employee probationary period. She asked “What do I do? [] this isn’t the right position for me clearly for neither me nor them.” January 19, 2018 hearing, Transcript at 12. Human resources told claimant “that if I resigned my position . . . that I would be back on the manifest to interview for the other position.” February 6, 2018 hearing, Transcript at 22.

(7) On October 3, 2017, claimant notified the employer by email that she resigned, effective immediately, because she was “not the right person” for the job. Exhibit 2. Claimant hoped by resigning from her job as a special programs employment specialist, the employer would allow claimant to interview for the senior clerical support position. She believed, but for her desire to interview for the other job, she “would have probably continued” to work as a special programs employment specialist

despite her concerns until she found another position. January 19, 2018 hearing, Transcript at 35. The employer accepted claimant's resignation. After claimant resigned, the employer did not reschedule claimant to interview for the senior clerical support position.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that 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.

Claimant primarily quit work because she wanted to interview for a senior clerical support position and was not allowed to do so while working for the employer as a special programs employment specialist because she was still a new employee on probation. It is clear on this record that claimant did not like her special programs employment specialist position and wanted to do something different. She had vague concerns about her safety and her ability to handle issues that arose with the student population in the community transitions program, but the job was suitable for her based upon her prior training and experience and education levels.<sup>1</sup> At the time she quit, claimant had canceled her interview for the position, does not appear to have been promised an interview, and did not have an offer of other employment. She therefore left her job with the employer to seek other work with the employer. OAR 471-030-0038(5)(b)(A) specifically provides that leaving work without good cause includes leaving suitable work to seek other work. Claimant therefore did not have good cause to quit work as a special programs employment specialist to seek work as a senior clerical support person.

Claimant also quit work, in part, because she was uncomfortable with the work and environment. She did not describe a situation of such gravity that she had no reasonable alternative but to quit work when she did. At the time claimant quit work, she had only worked for the employer for three hours. Although she discussed the working conditions with her direct supervisor and coworker, and felt that the supervisor "didn't have anything to say," she did not testify during the hearing that she specifically told the supervisor or anyone else that she feared for her safety or feared the students might injure her, feared for the students' safety, or required additional resources or training before being left alone with the students. As explained above, the work was not unsuitable for claimant given her education, training and prior work experience, and the employer planned to provide claimant with additional on-the-job training. Although claimant was clearly uncomfortable with the position, its duties and its location, the record fails to show that those conditions were grave or that a similarly situated reasonable and prudent

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<sup>1</sup> Factors to consider when determining whether work is "suitable" include, but are not limited to, "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." See ORS 657.190; ORS 657.195. On this record, special programs employment specialist work was not unsuitable for claimant.

person would have considered them so grave they had no reasonable alternative but to quit work. Moreover, the fact that claimant felt she “would have probably continued” to work as a special programs employment specialist, despite her concerns, until she found another position, demonstrates that she did not consider the working conditions subjectively grave, either. We find that no similarly situated reasonable and prudent person would have considered the working conditions so grave that they had no reasonable alternative but to leave work after only three hours. Claimant therefore left work without good cause, and she is subject to disqualification from receiving benefits based upon this work separation.<sup>2</sup>

**DECISION:** Hearing Decision 18-UI-103288 is affirmed.

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

**DATE of Service:** April 4, 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](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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<sup>2</sup> This case is distinguishable from *Krahn v. Employment Dept.*, 244 Or App 643, 260 P3d 778 (2011). In *Krahn*, the claimant was hired to work in a special education class at a residential juvenile offender treatment facility. 75% of the students had committed rape, sexual assault or assault, and had threatened the departing teacher’s life three times and made “numerous” sexual advances toward her. Claimant was told prior to accepting the position that the classes were small, there were multiple ways to get help, and she would not be alone with the students, and accepted the job based upon those conditions. Claimant subsequently toured the facility and found that the classroom was in a basement with only one phone and no panic button, and claimant was going to work alone with the students in that environment for the majority of the day. Claimant had no experience working with that student population, what she had been told prior to accepting the job was “demonstrably false,” and when she discussed her concerns with the supervisor, he responded, “this job isn’t for everyone.” The Court of Appeals determined claimant quit work with good cause, concluding “a reasonable person in claimant's position would have had no reason to believe that the school district was willing or able to make further accommodations to the teaching position . . . she reasonably understood the conditions . . . to be as she saw them on her tour, and reasonably believed that her only alternatives were to accept or decline the position as it existed.” In this case, there is no evidence that the students claimant was to supervise were criminal offenders, there is no evidence that any of them had committed an act of violence or threatened anyone, the work environment was differed, and there is nothing in this record suggesting that claimant lacked the means or methods to obtain help if she needed it. Additionally, while the claimant in *Krahn* specifically complained to the employer about her safety concerns and had been told falsehoods about the working conditions, this case lacks evidence that claimant specified her concerns, asked for help or training, or was misled about the working conditions.