

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0227**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, within 15 days of her planned voluntarily leaving without good cause (decision # 85156). Claimant filed a timely request for hearing. On December 4, 2017, ALJ Clink conducted a hearing, and on December 5, 2017 issued Hearing Decision 17-UI-98189, affirming the Department's decision. On December 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On January 17, 2018, EAB issued Appeals Board Decision 2017-EAB-1412, reversing Hearing Decision 17-UI-98189 and remanding the case to the Office of Administrative Hearings for additional evidence. On February 12, 2018, ALJ Clink conducted a second hearing, at which the employer failed to appear, and on February 13, 2011, issued Hearing Decision 18-UI-103204, again affirming decision # 85156. On March 5, 2018, claimant filed an application for review of Hearing Decision 18-UI-103204 with EAB.

**FINDINGS OF FACT:** (1) Native American Rehab Association (NARA) employed claimant as a family counseling service provider from October 6, 2016 to October 10, 2017.

(2) Although typically claimant was out of the office several times per day to attend home visits, she also worked around coworkers within the employer's local office. By September 2017, she began experiencing notable mental stress over negative interactions with several coworkers, including one in particular. That particular coworker often made what claimant perceived as belittling comments about her work activities in front of others.

(3) In mid-September 2017, claimant discussed her stress with her primary medical provider, who recommended that she speak with a mental health therapist and consider taking a temporary leave from work. She spoke with a therapist over the phone but did not arrange for future therapy sessions, which the therapist recommended as an option. She spoke with her supervisor about speaking with the coworker in question, but the supervisor left for vacation before doing so and claimant did not believe it would do much good because the offending coworker was a personal friend of the supervisor. She obtained necessary paperwork for requesting a leave from the employer's human resources office, but

did not make arrangements to complete it. She did not file a formal complaint against any coworker, arrange a meeting with her supervisor's supervisor or request a transfer to another office to eliminate the sources of her stress, although procedures for such actions were available and may have been successful.

(4) After claimant's supervisor left for vacation, the offending coworker assumed the role of claimant's supervisor, without any apparent authorization, and thereafter regularly criticized claimant's work, sometimes in front of others, although she had less training than claimant and claimant believed her criticisms were invalid, all of which caused claimant additional stress and aggravation.

(5) On October 6, 2017, claimant decided to just "give up" and notified the employer that she was quitting, effective October 19, 2017. Audio Record (December 14, 2017) ~ 12:00 to 14:00.

(6) On October 10, 2017, the employer notified claimant that it was not waiting for claimant to leave on October 19 and terminated her employment for that reason.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. The employer discharged claimant, not for misconduct, within fifteen days of claimant's planned voluntary leaving without good cause.

The first issue in this case is whether claimant quit work or was discharged. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant notified the employer on October 6, 2017 that she was quitting work on October 19, 2017. However, the employer did not allow claimant to work through her notice period. Because claimant was willing to continue working for the employer until October 19, 2017, but was not allowed to do so by the employer, the October 10, 2017 work separation was a discharge.

The record fails to show that the employer discharged claimant for a willful or wantonly negligent violation of the standards of behavior which the employer had the right to expect of claimant, or an act or series of actions that amounted to a willful or wantonly negligent disregard of the employer's interest. We therefore conclude the employer discharged claimant, not for misconduct. *See* OAR 471-030-0038(3)(a).

However, ORS 657.176(8) provides that when an individual has notified an employer that she (or he) will quit work on a specific date, and the employer then discharges her, not for misconduct, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that she is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned quit date. Claimant notified the employer on October 6, 2017 that she would end her employment on October 19, 2017. The employer discharged her, not for misconduct, on October 10, 2017, less than 15 days prior to her planned quit date. Therefore, we must determine whether claimant's planned quit would have been 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). 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 submitted her resignation notice on October 6 because interactions with some of her coworkers, one in particular, caused her stress and aggravation. However, before submitting her notice, claimant did not make reasonable attempts to minimize or eliminate her stress by meeting regularly with a mental health therapist or requesting a temporary leave of absence, both of which had been recommended by a medical provider. Nor did she follow-up with her supervisor about speaking with the offending coworker after the supervisor returned from vacation, meet with her supervisor’s supervisor if she believed her supervisor would ignore claimant’s request because of her friendship with the offending coworker, file a formal complaint against the offending coworker or request a transfer to another office, all of which were alternatives reasonably available to claimant. Absent a showing that these reasonable options were futile, viewed objectively, we cannot conclude that claimant had no reasonable alternative but to quit work when she did. Accordingly, claimant’s planned voluntary leaving was without good cause.

In sum, claimant notified the employer of her intention to voluntarily leave work, without good cause, but was discharged within fifteen days of the planned quit for a reason that did not constitute misconduct. Pursuant to ORS 657.176(8), claimant is disqualified from receiving unemployment insurance benefits except that she is eligible for benefits for the week from October 8 through 14, 2017 (week 41-17), which is both the week in which the actual discharge occurred and the week prior to the week of the planned quit date.

**DECISION:** Hearing Decision 18-UI-103204 is affirmed.

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

**DATE of Service:** April 5, 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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