

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0417**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110315). Claimant filed a timely request for hearing. On April 3, 2018, ALJ Murdock conducted a hearing, and on April 5, 2018 issued Order No. 18-UI-106750, affirming the Department's decision. On April 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Asante employed claimant as a registered nurse from April 3, 2017 to January 5, 2018.

(2) At all relevant times, claimant had obsessive-compulsive disorder. His condition had been under control for many years, but symptoms reemerged because of the direct patient care he performed in his job. Claimant became incapable of providing direct patient care and could not function in his job.

(3) Claimant did not qualify for federal or state protected leave. Beginning September 22, 2017, the employer approved a 45-day leave of absence under the Americans with Disabilities Act (ADA), and subsequently extended the leave period twice, through January 6, 2018.

(4) At the time of the second extension, the leave specialist with whom claimant had been working sent a letter to claimant instructing him that his leave could not be extended again unless he was seen at employee health by January 5<sup>th</sup> and provided an updated return to work note from his provider at the time of that appointment. The letter included the employee health unit phone number.

(5) Claimant had once attempted to transfer into a position that did not involve direct patient care but the transfer did not work out. The employer was willing to continue to try to transfer him to a position he was medically capable of doing, and had referred him to employee health as part of that process.

(6) Claimant felt that, despite the employer's actions, the employer did not sincerely want to retain him as an employee. Claimant did not plan to return to work, and did not want to talk to employee health. Instead of meeting with employee health, he quit work effective January 5, 2018.

**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 he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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). Claimant had obsessive-compulsive disorder, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

There is no dispute that claimant faced a grave situation because his health condition prevented him from performing a basic function of the job he held with the employer. However, it is more likely than not that a reasonable and prudent person with obsessive-compulsive disorder, whose condition prevented him from performing direct-care job duties, would not leave work without first exploring his options for performing other work with the employer. The employer had accommodated claimant's leave request and two extensions, and was willing to continue working with claimant to return him to work or further extend his leave through its employee health unit. Although claimant did not feel the employer's offers of assistance were sincere, the record fails to show that it would have been futile for claimant to attend the employee health appointment to determine whether or not there were additional reasonable options he could pursue short of quitting work. Instead, because claimant did not plan to return to work for the employer, he chose to quit his job. Because claimant quit his job at a time when a reasonable alternative to doing so remained available to him, he quit his job without good cause and is disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Order No. 18-UI-106750 is affirmed.

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

**DATE of Service:** May 24, 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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