

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0488**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74419). Claimant filed a timely request for hearing. On April 27, 2018, ALJ Janzen conducted a hearing, and on April 30, 2018 issued Order No. 18-UI-108368, affirming the Department's decision. On May 9, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Order No. 18-UI-108368 states that there were no exhibits in the record. However, the ALJ marked and admitted Exhibit 1 at hearing, without objection. We considered the entire hearing, including Exhibit 1, record in reaching this decision.

**FINDINGS OF FACT:** (1) Express Employment Professionals, a temporary agency, employed claimant from November 27, 2017 until February 9, 2018. The employer assigned claimant to work as a member services representative for its client, Life Flight Network.

(2) In early January 2018, during a meeting claimant had with his supervisor at Life Flight Network, the supervisor slammed a file cabinet drawer while frowning and looking at claimant, causing claimant to feel intimidated by the supervisor. Claimant did not complain to the employer about the supervisor's conduct at that time.

(3) Claimant's contract period as a temporary employee with Life Flight Network was not yet complete on February 8, 2018. On February 8, 2018, claimant met with his supervisor at Life Flight Network and asked her if Life Flight Network would hire him as a permanent employee or write him a letter of reference. The supervisor at Life Flight Network refused and claimant felt the supervisor's demeanor and tone of voice during the meeting and response to his requests were hostile and aggressive. He felt she might retaliate against him in the future by discharging him if he made a mistake at work.

(4) On February 9, 2018, claimant met with one of the employer's staffing consultants and told her about his concerns from the February 8 meeting with the Life Flight Network supervisor and that he felt

uncomfortable continuing to work for Life Flight Network. Claimant also told the staffing consultant about the occasion when the supervisor had slammed a cabinet drawer in January 2018. The staffing consultant told claimant he did not have to continue working for the client if he felt uncomfortable and that she would send him other potential work assignments. Claimant did not return to work with Life Flight Network.

(5) Although Life Flight Network had implemented new software that eliminated some of claimant's duties, it had continuing work available for claimant on February 9, 2018. The employer never told claimant that claimant's work assignment with Life Flight Network had ended.

(6) On February 9, 2018, the employer's staffing consultant told claimant he could be considered for a position with another client. Claimant agreed to be considered for the position. Later on February 9, 2018, the staffing consultant told claimant that the other client selected a different employee for the position and that she would contact claimant regarding other jobs in the future.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude the claimant voluntarily left work without good cause.

Because claimant asserted at hearing that he did not quit his job with the employer when he did not return to work with Life Flight Network on February 9, 2018, we will first address the nature of the work separation. Audio Record at 11:23 to 11:28. 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) (January 11, 2018). In the case of individuals working for a temporary agency, the employment relationship is deemed severed at the time that a work assignment ends. OAR 471-030-0038(1)(a).

Claimant asserted that he "understood" that his work assignment had ended with Life Flight Network because it had implemented new software eliminating the need for claimant's work. Audio Record at 37:43 to 38:17. However, the record shows claimant knew his work assignment was ongoing. The employer did not tell claimant his assignment ended, and claimant met with the employer's staffing consultant on February 9 to explain his concerns about how the supervisor at Life Flight Network would treat him when he *returned to work*. Because claimant could have continued to work at the Life Flight Network assignment but chose not to do so, his work separation from that work assignment was a voluntary leaving. Although claimant was willing to accept another position with the employer, for purposes of unemployment insurance benefits, claimant's decision to quit the Life Flight Network assignment severed the employment relationship between claimant and the employer, even if claimant remained registered with the employer for other assignments. The work separation therefore was a voluntary leaving, effective February 9, 2018, the day claimant voluntarily left his the temporary assignment.

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). 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 his employer for an additional period of time. A claimant who quits work to accept an offer of new work has good cause to leave work only if the offer of new work is definite and the work is to begin in the shortest time deemed reasonable under the individual circumstances. OAR 471-030-0038(5)(a).

Claimant decided not to return to work when his supervisor responded to claimant in a manner claimant considered “hostile” during a meeting on February 8, 2018 about the status of his employment. Audio Record at 14:55 to 15:15. The supervisor told claimant that she did not want to hire claimant as a permanent employee or give him a letter of recommendation, and considered claimant to be “disgruntled.” Audio Record at 15:53 to 16:47. Based on the conversation, claimant feared the supervisor might retaliate against claimant by discharging him from his assignment. Audio Record at 15:15 to 15:24. Although the supervisor’s comments were somewhat hostile, they did not rise to level of mistreatment necessary to constitute good cause to quit work. One incident of slamming a cabinet drawer and another with “hostile” statements that contain no foul language, threat or content of an egregious nature are not sufficient. The behavior that claimant described, while it may have upset claimant, was not so egregious that it would cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to conclude that he had no reasonable alternative but to quit his job. Moreover, claimant could have continued to work after he complained to the employer’s staffing consultant to see if the employer could improve claimant’s circumstances with its client.

Claimant also asserted that the work ended with the client and the employer offered him another position. Audio Record at 11:40 to 11:48. To the extent claimant left work to accept an offer of other work, claimant did not leave work with good cause. Claimant did not show that the employer made an offer of another job that was sufficiently definite at the time he left work with Life Flight Network to constitute good cause for leaving work under OAR 471-030-0038(5)(a). As of February 9, claimant had not yet been offered another position. He was merely being considered as an applicant for a position.

Claimant did not show that he quit work with good cause. He is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 18-UI-108368 is affirmed.

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

**DATE of Service: June 11, 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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