

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0631

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152915). Claimant filed a timely request for hearing. On June 5, 2018, ALJ Jarry conducted a hearing and issued Order No. 18-UI-110707, affirming the Department's decision. On June 25, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) In December 2017, claimant's former employer, Avalon, told claimant that HCSG West LLC (employer) would be taking over the dietary services for Avalon on January 1, 2018. Claimant was working as a nutritional services manager and certified dietary manager for Avalon at that time. Claimant's duties included nutritional clinical duties such as completing nutritional assessments and care plans for residents. Avalon told claimant she could apply for a similar position with the employer.

(2) Claimant preferred to work doing clinical duties, and did not want to be a kitchen manager, because of personal preference and because she was certified to work as a dietary manager.

(3) Claimant understood from the employer that her job duties would remain the same if she were to apply for an account manager position with the employer. Claimant applied for the position, was hired by the employer and began working on January 1, 2018 as an account manager. The employer expected claimant to perform general kitchen manager duties with a focus on food and service instead of the clinical work claimant had done in the past. The employer provided claimant with training for the kitchen management duties through its district managers and computer tutorials.

(4) From January until April 3, 2018, claimant continued working performing nutritional clinical duties, but also had kitchen managerial duties. On April 3, 2018, the employer sent claimant and other dietary services staff a clarifying email stating that only the employer's registered dieticians were permitted to complete the clinical duties. Claimant was not a registered dietician.

(5) On April 3, 2018, claimant gave notice that she would quit work on April 13, 2018 because she preferred to perform clinical duties rather than kitchen managerial duties.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit 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) (January 11, 2018). 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 quit work because the employer changed her work duties so she was no longer performing the work assignments she preferred. Although claimant preferred clinical duties to kitchen management duties, she did not show that the kitchen management duties she was given were unsuitable for her, endangered her health or well-being, or otherwise presented a grave situation for her. The record does not show that the account manager position would pay less when claimant's duties changed. Nor does the record suggest that the employer was being abusive or unreasonable when it withheld clinical duties from her. Rather, the employer's work assignment considerations appear to have been reasonably motivated by a legitimate business decision to have only registered dieticians performing those duties. Claimant's preference to work completing resident assessments and care plans, and her dissatisfaction when she was not given her preferred assignments or was reassigned from performing clinical duties to managing the kitchen, did not amount to a grave situation.

Claimant did not show good cause for leaving work. She is therefore disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 18-UI-110707 is affirmed.

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

DATE of Service: July 31, 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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