

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0878**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 180026). Claimant filed a timely request for hearing. On August 27, 2018, ALJ Seideman conducted a hearing, and on August 29, 2018 issued Order No. 18-UI-115738, affirming the Department's decision. On September 10, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she identified several alleged errors in the facts that the ALJ found in Order No. 18-UI-115738 and presented additional information that she did not offer during the hearing. Since claimant did not show, as required by OAR 471-041-0090(2) (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from presenting at hearing the new information that she is now offering, EAB could not consider claimant's argument when reaching this decision. Regardless, EAB's function is to review the hearing record *de novo* and reach a decision supported by the facts as developed in the hearing record. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Sea View Senior Living Community employed claimant as a caregiver from very late May 2018 until June 22, 2018. The employer operated a residential facility for the elderly.

(2) The employer had policy in place that required an employee to immediately report any abuse or neglect of residents that the employee observed to the employee's supervisor, the manager on duty or Adult Protective Services (APS). On May 29, 2018, claimant acknowledged the policy by signing it.

(3) Shortly after claimant began working for the employer and while she still was being trained, claimant was showering a resident and trying to keep soap and water away from the resident's eyes. The person who was training claimant abruptly "grabbed" the wash cloth that claimant was using from her hands and told her that she needed to "speed up" and perform the showering "faster." Audio at ~8:39.

(4) Early in her employment, claimant concluded that the facility was understaffed, there was not enough time for her coworkers to perform necessary tasks and her coworkers were “stressed.” Audio at ~9:14. However, claimant also noticed that some of the coworkers who worked with her in the evenings, including the medical technician, did not “work,” but “spent their time with each other and their cell phones after people have gone home,” and “stand[ing] around talking.” Audio at ~16:30, ~20:20. Claimant thought these coworkers ignored residents’ needs.

(5) Once, claimant observed a coworker unsuccessfully trying to remove socks that a diabetic male resident was wearing. The socks were a very small pair of women’s socks. Ultimately, claimant was able to get the socks off the resident without having to cut them off. Claimant assumed that a coworker had put the wrong socks on the male resident, and thought that the resident had been neglected.

(6) Once, the medical technician asked claimant if she would do the laundry. Claimant agreed to do so. However, when claimant entered the laundry room, she saw that there were piles dirty clothes on the floor rather than being in laundry baskets; the washer was open, not running but filled with dirty clothes; the dryer was open, not running, but filled with wet clothes; and there was a set of keys on the top of the dryer. Claimant concluded that a coworker had left the keys behind after abandoning the task of doing the laundry. Claimant assumed that this coworker was responsible for the mess and disarray in the laundry room. Claimant left the laundry room and went back to speak to the med tech who had asked her to do the laundry. Claimant explained what she had observed in the laundry room and told the med tech that she was not going to clean up the laundry room for the coworker who was responsible for its condition since it was not her job to clean up after coworkers. Someone other than claimant cleaned up the laundry room and did the laundry.

(7) Before June 22, 2018, no supervisors or coworkers had spoken to claimant expressing dissatisfaction with her work performance. Claimant had not spoken to her supervisors, managers or coworkers about any abuse or neglect she had observed in the workplace.

(8) On June 22, 2018, the registered nurse spoke to claimant about her work performance. The med tech to whom claimant had stated she would not clean up the laundry room was also present during the discussion. Claimant understood the nurse to state that claimant was “not carrying [her] weight around here,” and that all of claimant’s coworkers agreed that she was not performing her job. Audio at ~31:14. Claimant thought the nurse was likely referring to a complaint made by the med tech arising from her refusal to do the laundry. Claimant responded to the nurse that her coworkers, including the med tech, routinely did not perform the work that was expected of them. Claimant thought that her coworkers had misrepresented to the nurse that she was not performing her work in retaliation for claimant having refused to clean the laundry room. Claimant was upset that her supervisor was not present in a discussion about her work performance and about the reports of coworkers that she was not performing her work. Claimant abruptly left before the nurse had concluded the discussion.

(9) After walking away from the registered nurse, claimant went to the front desk. Claimant was upset and told the receptionist there that she was quitting work because she was “sick of it.” Audio at ~37:41. The receptionist asked claimant if she had spoken to her supervisor or the executive director and advised that she do so before quitting. Claimant told the receptionist that she was not going to make a “report to the state.” Audio at ~37:41. Claimant then left the workplace and did not return. On June 22, 2018, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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) (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.

Although claimant contended at hearing that she left work, in part, because her coworkers were making fabricating stories that she was not working in retaliation for claimant having made reports of abuse and neglect of residents, it is not clear what reports of abuse claimant was referring to. Audio at ~7:40, ~10:36, ~13:20, ~14:22. When asked by the ALJ to whom she made these reports of abuse, claimant stated that she told the nurse about the med tech, presumably during the discussion in which claimant decided to resign and which occurred moments before claimant actually resigned. Audio at ~18:51. It is not clear what, exactly, claimant told the nurse about the med tech or what abuse she reported on the part of the med tech. It is also difficult to see how claimant’s coworkers could have taken retaliation against claimant in response to any “report” of abuse made during the June 22 discussion with the nurse since there would have been no time for such retaliation to have occurred. In response to the employer’s cross-examination inquiring into any reports of abuse she made, claimant stated only that she tried to speak with her supervisor after she had resigned about alleged abuse and neglect of residents. Audio at ~21:33. The record does not support that claimant’s coworkers retaliated against her for making reports of abuse or neglect.

Assuming that claimant resigned due to her stated concerns that residents were being subjected to abuse and neglect, it does it appear that claimant met her burden to show that abuse and neglect were occurring in the employer’s facility. The incidents claimant described at hearing as showing resident abuse and neglect were being told to work faster when showering the resident and women’s socks having been placed on the feet of a male resident. It does not appear that being told to shower a resident more quickly on one occasion shows that abuse of that resident or other residents was occurring in the facility. It also does not appear that the wearing of the too-small socks on one occasion was emblematic of neglect since there was no evidence presented as to the length of time the resident was in those socks and there was no evidence that the socks were not promptly taken off after the resident was discovered to have been wearing them. In addition, as discussed above, claimant did not show that she reported alleged resident abuse or neglect, which she would be expected to do if residents were in fact being abused. The record does show by a preponderance of the evidence that abuse and neglect of residents was occurring in the employer’s facility.

It appears, most likely, that claimant resigned because of the nurse’s statement during the June 22 discussion that claimant’s coworkers agreed in reports made to her that claimant was not doing her job. Audio at ~13:50. While it is understandable that claimant was distressed when she learned that her coworkers were telling the nurse that she was not adequately performing her duties, claimant did not show that her situation was objectively grave, even if she thought the coworkers’ reports were

inaccurate. Claimant did not suggest that the nurse intended to discipline her for allegedly inadequate work performance based on the coworkers' reports, particularly since she had been working as a caregiver only for approximately three weeks and was still in training. Claimant did not show that it would have been futile for her to explain to the nurse why she was performing her tasks in the manner that she was, and to obtain input from the nurse as to how the nurse expected her to perform in the future. As well, claimant did not show that it would have been futile for her to address the allegedly false reports about not doing her job with her supervisor, who also was the person training claimant and the person in the workplace that claimant "trusted" most. Audio at ~12:50. A reasonable and prudent caregiver in claimant's position would not have abruptly quit work during the June 22 discussion with the nurse without having tried to explain her work performance to the nurse and before she was able to raise her concerns with her supervisor and trainer. On this record, claimant did not show that her situation was objectively grave and she had no reasonable alternative but to leave work when she did.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-115738 is affirmed.

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

**DATE of Service:** October 17, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.