

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0923**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 130907). Claimant filed a timely request for hearing. On September 6, 2018, ALJ Seideman conducted a hearing, and on September 7, 2018, issued Order No. 18-UI-116227, affirming the Department's decision. On September 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted written argument. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and claimant's argument, to the extent it was based on the record, when reaching this decision.

**FINDINGS OF FACT:** (1) Veteran's Health Administration employed claimant as an administrative medical support assistant from June 2, 2013 to July 6, 2018.

(2) Claimant suffered from osteoporosis of her hips, multilevel degenerative disc disease and intermittent depression, all of which she was diagnosed with in 2016 or earlier. Claimant was periodically treated for her medical conditions with chiropractic and massage therapy, physical therapy, stress reduction classes and acupuncture with varying success.

(3) Claimant typically performed work as a patient scheduler at the Roseburg VA Medical Center. That work required her to sit for long periods of time, which caused her moderate to severe back pain due to her degenerative disc disease. In March 2016, claimant requested an ergonomic work station that would allow her to periodically stand while working. An occupational therapist for the employer performed an ergonomic evaluation of claimant's work site and recommended that she be given an Ergotron sitting and standing work station. Claimant became upset when the recommended work station was not

provided soon after the evaluation. Approximately ten months later, the Ergotron work station was provided. Despite the new work station, claimant continued to experience moderate to severe pain while performing her job.

(4) On June 19, 2018, claimant inquired of the employer's human resources department if there were any medical support assistant jobs that were mobile. Her email stated:

Hi... I am an MSA and I have been here for 5 years. I have a question. Are there MSA jobs that are mobile? I have medical and stress issues and cannot be stationary at a desk for 8 hours. I have an Ergotron set up but I have to be moving. Thank you...

Exhibit 13.

(5) Later on June 19, 2018, claimant received a response informing her that most medical support assistant (MSA) positions were stationary but that there were possibilities. Claimant was advised to contact a particular human resources specialist (LL) about the employer's "reasonable accommodation program" and given LL's contact number. Exhibit 13. Claimant contacted LL and discussed her concerns. LL provided claimant with necessary American with Disabilities Act (ADA) paperwork and suggested that she have her physician complete it as required and return it to her. Rather than doing so, claimant researched the ADA on her own and concluded that she would not qualify for any accommodation from the employer. Claimant never spoke to LL to discuss her concerns about not qualifying under the ADA.

(6) On or about June 22, 2018, claimant gave the employer two weeks' notice that she was quitting her job. On July 6, 2018, claimant quit work because she considered her back pain and stress to be too severe for her to put up with any longer and because she did not believe that any positions that were not stationary would be available to her. None of claimant's medical providers recommended that she quit work.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work 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) (January 11, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant was diagnosed in 2016 or earlier with osteoporosis of her hips, multilevel degenerative disc disease and intermittent depression, permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for the employer for an additional period of time.

Claimant failed to show that a reasonable and prudent medical support assistant with her impairments, exercising ordinary common sense in the face of a valid concern that she could no longer tolerate working for the employer in a stationary, non-mobile position due to the back pain and stress it caused, would have concluded that the situation was so grave that there was no reasonable alternative but to quit work when she did. Claimant did not assert or show that any medical provider recommended that she quit under the circumstances or that she even discussed it with any provider before giving her two week notice. Moreover, she did not respond to LL to discuss her concerns about not qualifying under the ADA. On this record, claimant failed to show that no reasonable and prudent person in her circumstances and with her impairments would have taken those reasonable steps and continued to work for the employer until she or he had done so.

Claimant did not have good cause to quit work when she did and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

**DECISION:** Order No. 18-UI-116227 is affirmed.

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

**DATE of Service: October 29, 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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