

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1010**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 13, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105845). Claimant filed a timely request for hearing. On October 16, 2018, ALJ M. Davis conducted a hearing, and on October 18, 2018 issued Order No.18-UI-118370, affirming the Department's decision. On October 22, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB. The first part of the submission was apparently prepared for EAB, while the second part of the submission was a letter to the employer's human resources office which claimant stated was sent to the employer after the hearing. Claimant did not certify that she provided a copy of either submission to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Both parts of the submission also contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering that information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider the new information contained in either submission. EAB considered only information received into evidence in the record when reaching this decision.

**FINDINGS OF FACT:** (1) Oregon Employment Department employed claimant as a limited duration adjudicator in its special programs center (SPC) from July 10, 2017 until February 13, 2018.

(2) Sometime between 1998 and 2003, claimant was diagnosed with asthma. Claimant was prescribed a maintenance medicine to control the asthma. Sometime before approximately 2011, claimant began using Albuterol in the form of a rescue inhaler when she had significant breathing difficulties that were not controlled by the maintenance medicine. As of early 2018, claimant was also experiencing breathing difficulties due to undiagnosed chronic obstructive pulmonary disease (COPD).

(3) As an SPC adjudicator, claimant investigated and issued decisions on unemployment insurance cases that were assigned to the SPC center, which included training unemployment insurance (TUI) cases. When claimant was hired, she was informed that she would also be expected to investigate and issue decisions on cases assigned to the employer's regular unemployment insurance (UI) program, including voluntary quit and discharge cases, to assist the regular UI center during its peak winter workload. Sometime after she was hired, claimant took an eight week course to train her in how to process and issue decisions in regular UI program cases.

(4) Sometime around October or November 2017, claimant contracted pneumonia and experienced increased breathing difficulties. Around this time, claimant took time off from work due to illness and medical appointments. When claimant would miss work because of medical appointments, she would inform her supervisor that she was going to visit her doctor and she told the supervisor that she had asthma. However, claimant did not tell her supervisor at any time that she was unable to perform her duties as a result of illness or breathing difficulties or that the steps needed to process particular types of cases impaired her health.

(5) In approximately mid-January 2018, claimant's supervisor informed her that she was going to begin working on regular UI program adjudications in addition to TUI adjudications for SPC. Around this time, a lead employee in regular UI adjudications showed claimant and a coworker how to access the regular UI case files. The lead then told claimant to access and process regular UI voluntary quit adjudications. Claimant told the lead in response that she did not want to work on regular UI voluntary quit cases because she was hired as an SPC adjudicator and asked the lead not to require her to work voluntary quit cases. The lead contacted claimant's SPC supervisor to determine if there was any type of regular UI case that claimant did not need to handle. After contacting the supervisor, the lead told claimant she would not be exempted from working on regular UI voluntary quit cases. During this conversation, claimant did not tell the lead why she did not want to write voluntary quit decisions or that she thought that health issues prevented her from working on voluntary quit decisions. Claimant had no further dealings with the lead.

(6) After claimant discussed voluntary quit cases with the lead, claimant also discussed working on them one or two times with her SPC supervisor. Claimant told the supervisor that she did not want to work on regular UI voluntary quit cases and that she preferred to work SPC adjudications because she considered the regular UI voluntary quit cases "more contentious, more stressful and [they] weren't as positive as SPC decisions." Audio at ~37:40. Claimant never told her supervisor that she was not able to work on voluntary quit adjudications because of a health condition, or for any reason other than that she disliked the acrimony she perceived arising from them. Audio at ~37:48. Claimant never sought an accommodation from her supervisor to exempt her for health reasons from working on voluntary quit cases. Had claimant requested to limit her work on voluntary quit cases because they negatively impacted her health, the supervisor would have pursued reasonable accommodations for her through the employer's human resources department.

(7) Around January 30, 2018, claimant's supervisor told her she needed to continue working on voluntary quit decisions. On that day, claimant completed paperwork from the employer to resign from employment, effective February 13, 2018. Claimant's stated reason for resigning was to stay home for health reasons.

(8) On February 13, 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). Claimant had asthma and COPD, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those impairments 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 her employer for an additional period of time.

Claimant contended that she left work when she did because the length of the telephone calls involved in adjudicating voluntary quit cases greatly exacerbated her breathing difficulties from asthma and COPD, and after she told the lead and her supervisor in January that her breathing difficulties prevented her from working solely on voluntary quit cases, the employer did not make a workload accommodation available to her by limiting the number of voluntary quit cases she was expected to work on. Audio at ~8:04, ~21:14. Claimant further contended that if the employer had provided the requested accommodation to her by exempting her from working only on voluntary quit cases, she would still be working for the employer, or, in other words, her asthma and COPD would not otherwise have prevented her from continuing to work for the employer. Audio at ~21:14. The employer’s witnesses at hearing, the lead and claimant’s supervisor, testified that claimant never told them she could only work on a limited number of voluntary quit cases for health reasons, or for any reason other than that she had a subjective preference to do so. Audio at ~29:01, ~29:50, ~31:55, ~36:29, ~37:48, ~39:44, ~40:05. Both employer witnesses also testified that claimant did not ask either of them for workplace accommodations, and did not disclose enough about her health conditions to inform them that working on particular types of cases negatively impacted her health or to put them on notice that she had a need for workplace accommodations. Audio at ~24:19, ~36:30, ~39:44.

The testimony of claimant and the employer’s witnesses on the principal issues in this case was irreconcilable. There was no independent evidence that corroborated or tended to corroborate or disprove the testimony of either party’s witnesses. Thus, there is no reason in the record to doubt the credibility of claimant or the employer’s witnesses or the accuracy of their conflicting testimonies. Where, as here, the evidence on disputed issues is evenly balanced, the uncertainty in the evidence must be resolved against claimant since she was the party who carried the burden of persuasion in this voluntary leaving case. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Accordingly, the testimony of the employer’s witnesses is accepted when it is in conflict with that of claimant and forms the basis for the findings of fact in this decision.

Although claimant’s circumstances may have been grave as a result of her health conditions, she failed to establish that she had no reasonable alternative other than to leave work when she did. Based on burden of persuasion principles, claimant did not show by a preponderance of the evidence that she

disclosed the effect of working on voluntary quit cases to the employer, nor that she asked and the employer refused to provide accommodation for her breathing difficulties that would have allowed her to continue working despite those difficulties. Claimant also did not show by a preponderance of the evidence that it would have been futile for her to seek that workplace accommodation from the employer. On this record, a reasonable and prudent person with claimant's health conditions would not have left work without first seeking an accommodation from the employer, particularly when, as did claimant, she was confident that the accommodation would allow her to continue working.

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-118370 is affirmed.

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

**DATE of Service:** November 21, 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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