

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0093

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 28, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision #74749). Claimant filed a timely request for hearing. On December 20, 2013, ALJ Menegat conducted a hearing, and on December 27, 2013 issued Hearing Decision 13-UI-07189, affirming the Department's decision. On January 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. The employer's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer 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 when reaching this decision.

**FINDINGS OF FACT:** (1) Electronics International, Inc. employed claimant from April 4, 2002 to September 11, 2013 as a production team member.

(2) On September 10, 2013, claimant's supervisor told her to redo some equipment claimant had built because she had put the screws in incorrectly. Claimant became upset because the instructions did not show how to insert the screws, and because the errors were included on claimant's error report. The supervisor met with claimant and the employer's vice president to discuss claimant's concerns. At the meeting, claimant told the employer she was dissatisfied with work because she did not receive the preferred job assignments or training that newer employees received. She also told the employer she might need a microscope or jeweler's loop to perform her work tasks. The employer explained that claimant did not receive certain work assignments due to errors in her work, and told claimant the employer would address her equipment needs. Claimant and the employer were satisfied with the outcome of the meeting. Claimant returned to work.

(3) On September 11, 2013, the employer's owner met with claimant on the production floor to discuss claimant's equipment needs. The owner decided claimant did not need a microscope or jeweler's loop, but offered to purchase claimant different glasses for her different job tasks. Claimant was upset and stated loudly in front of other employees that she had never asked her supervisor and the vice president for a microscope. The owner confirmed with the supervisor and the vice president that claimant had requested a microscope during the September 10, 2013 meeting, and reprimanded claimant for insinuating in front of other employees that her managers had lied about her request for a microscope.

(4) Later during her shift, claimant cleared most of her personal items from her workstation. Carrying her personal items in her arms, claimant took a photograph of the supervisor with her telephone, and said, "See ya. I'm outta here," to the supervisor. Transcript at 18. Claimant then went to the owner's office, knocked forcefully on the door, entered the owner's office and yelled, "I quit. I'm out of here. I'm not coming back." Transcript at 10. Claimant slammed the door, and left. Almost immediately, she came back into the office and yelled at the owner, saying she had not asked for a microscope. Claimant began yelling at the vice president, who was also present, and told him he was a "liar." Transcript at 43. The owner then told claimant, "I'm glad you quit, 'cuz you're fired." Transcript at 44.

(5) Claimant left the office, then returned to the office one more time to make a disparaging remark about her supervisor. Claimant left work, and the marketing manager locked the front door. Claimant came back in through the back door, refused to leave without the calendars from her desk, and finally agreed to leave when the marketing manager threatened to call the police.

(6) Claimant had an anxiety disorder throughout her employment. She took prescription medication to treat the symptoms. Claimant had told her supervisor about her anxiety disorder, but asked the supervisor to refrain from disclosing the information to anyone else at work.

**CONCLUSIONS AND REASONS:** We conclude claimant voluntarily left work without good cause.

The employer asserted that claimant quit work. Claimant testified that the employer discharged her. Accordingly, we first determine the nature of the work separation. 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) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant asserted at hearing that she was leaving work on September 11, 2013 because she was having a panic attack. Transcript at 69. However, the preponderance of the evidence shows claimant quit at that time. Claimant, not the employer, initiated the work separation and objectively demonstrated she was not willing to continue to work for the employer for an additional period of time. Claimant stopped working during the middle of her shift, cleared her desk of her personal items. Carrying the items with her, claimant told the supervisor that she was leaving, without explanation, and told the owner that she quit. Claimant severed the employment relationship at that time. The owner's subsequent statement that she was "glad you quit, 'cuz you're fired," did not change the nature of the work separation. Transcript at 44. Claimant voluntarily left work.

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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had an anxiety disorder, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment 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 quit work because she was frustrated that the owner met with her to determine if she needed different equipment to perform her job, and reprimanded claimant for insinuating that her managers had lied about her request for a microscope. Neither action on the employer’s behalf was unreasonable. A reasonable and prudent person with the characteristics and qualities of an individual with an anxiety disorder would have continued to work for her employer for an additional period of time. Such a person would have accepted the owner’s warning, and continued to work for the employer. Claimant voluntarily left work without good cause. She is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 13-UI-07189 is affirmed.

Susan Rossiter and Tony Corcoran;  
D. E. Larson, not participating.

**DATE of Service:** February 13, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

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