

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0156

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 4, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 102001). Claimant filed a timely request for hearing. On January 8, 2014, ALJ Clink conducted a hearing, and on January 21, 2014 issued Hearing Decision 14-UI-08807, affirming the Department's decision. On January 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument.

FINDINGS OF FACT: (1) George Morlan employed claimant as a sales associate from May 15, 2011 to October 12, 2013.

(2) On October 12, 2013, claimant reported to the store manager that a customer had told her if he were her manager, he would "fire" her. Transcript at 9. Claimant told the store manager that she was unwilling to return to work. The store manager told claimant that she could either return to work, or "quit." Transcript at 8. Claimant signed a work separation form and left work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

The first issue in this case is the nature of the work separation. OAR 471-030-0038(2)(b) (August 3, 2011) provides that 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. If the employee could have continued to work for the same employer for an additional period of time, the

work separation is a quit. OAR 471-030-0038(2)(a). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. *Id.*

In the present case, claimant could have continued the employment relationship for an additional period of time if she had returned to work on October 12, 2013 instead of signing a work separation from and leaving work. The employer did not prevent claimant from returning to work that day. The work separation therefore is a quit.

A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting 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 quit 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). 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.

At hearing, claimant testified that she left work because the employer’s store manager required her to return to work after being “hit” by a customer in the “face.” Transcript at 9. At hearing, however, the store manager testified that claimant reported only that the customer had told her that if he were her manager, he would fire her. Transcript at 27. The store manager also testified that he would have observed any physical assault by the customer, and did not. Transcript 34. The store manager’s testimony was corroborated by the corporate sales manager, who testified that claimant did not assert she had been assaulted until several days after she quit, and that the employer’s security camera recorded no assault. Transcript at 36-37. Claimant failed to show by a preponderance of evidence that she was assaulted by the customer, that she reported the assault to the store manager, and that the store manager required her to return to work. Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

We therefore conclude that claimant quit work without good cause, and that she is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-08807 is affirmed.

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

DATE of Service: February 25, 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>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.