

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0262**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 15, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 171534). Claimant filed a timely request for hearing. On January 24, 2014, ALJ Hatfield conducted a hearing, and on January 30, 2014, issued Hearing Decision 14-UI-09463, affirming the Department's decision. On February 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. 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 when reaching this decision.

In her written argument, claimant objected to a portion of the testimony in the record that the employer's witness provided before the ALJ administered the oath to him. The witness later affirmed the truth of his previously unsworn statements under oath. Thus, we reviewed the entire record before making our decision. Had we disregarded the testimony, it would not have changed the outcome of this decision.

**FINDINGS OF FACT:** (1) Petco Animal Supplies Stores, Inc. employed claimant from October 7, 2010 to October 14, 2013 as a sales associate.

(2) Claimant was diagnosed with complex post-traumatic stress disorder (PTSD) as a child, and has been receiving treatment for the condition since that time.

(3) On October 14, 2013, claimant's manager called claimant into his office for a loss prevention interview. The employer's loss prevention manager also participated in the interview by telephone. The purpose of the interview was to ask claimant questions about an incident when claimant allegedly allowed a friend to leave the store with three items without paying for them. The employer's surveillance video allegedly showed claimant acting as cashier for her friend, and failing to scan three of five items in her basket before her friend left the store with the five items.

(4) The manager began the interview by asking claimant several general questions about whether she knew about any recent inventory losses at the store. Claimant felt stressed by the interview, and thought the manager was going to accuse her of theft.

(5) On October 14, 2013, claimant quit work because she felt stressed during the loss prevention interview and did not want the employer to accuse her of theft.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that 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 6573176(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*, 347 Or 605, 612, 236 P2d 722 (2010). Claimant had complex post-traumatic stress disorder (PTSD), 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 felt stressed by the October 14, 2013 interview and thought the employer was going to accuse her of theft. The employer had a right to investigate losses potentially attributable to its employees, and it was concerned because a video of claimant appeared to show claimant allowing a friend to leave the store without paying for three items. Claimant has complex PTSD, and felt the fear and stress of a person with such condition during the interview. Claimant decided to quit rather than participate in the employer's investigation.

The record does not show that no reasonable and prudent person with the characteristics and qualities of an individual with complex PTSD would have continued to work for her employer for an additional period of time because of the stress of the interview on October 14, 2013. Rather than quit her job, claimant had the reasonable alternative of continuing her employment, answering the manager's questions, and cooperating with the employer's investigation. Alternately, if claimant was unable to cope with the stress of the interview on October 14, 2013 due to her complex PTSD, she could have requested an accommodation such as to continue the meeting at another time, or to answer the employer's questions in writing. The record does not show that requesting an accommodation would

have been futile. Thus, claimant has not met her burden to show she quit work with good cause, and therefore is disqualified from the receipt of unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-09463 is affirmed.

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

**DATE of Service:** March 14, 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.