

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0323

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 19, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 84736). Claimant filed a timely request for hearing. On January 24, 2014, ALJ Upite conducted a hearing, and on February 5, 2014 issued Hearing Decision 14-UI-09904, affirming the Department's decision. On February 24 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Amy's Kitchen employed claimant as a warehouse employee from October 8, 2012 to July 19, 2013.

(2) In March 2013, claimant complained to the employer's human resources department and logistics manager about the employer's error in processing his benefits paperwork, which was going to cost claimant approximately \$900. Claimant also reported that a lead worker, who had since been transferred to another facility, had yelled at claimant on two occasions in December 2012 and January 2013. Claimant later complained to the employer's plant manager about the error in processing his benefits paperwork, the lead worker, claimant former and current supervisor, and the logistics manager.

(3) Claimant later reported that his former supervisor, new lead worker, and current supervisor had surrounded him during his lunch break, and that his former supervisor and new lead worker had threatened him, in retaliation for complaining to the human resources department and plant manager. Claimant also complained that the logistics manager witnessed the incident and did not intervene.

(4) The employer's human resources department interviewed the other employees. Claimant's former supervisor admitted criticizing claimant for complaining to the human resources department, but denied threatening claimant. The new lead worker and claimant's current supervisor admitted that they were present during the conversation but denied threatening claimant. The logistics manager admitted

walking past claimant during the conversation, but stated that it did not appear to be “out of the ordinary,” and that claimant did not appear to be in any type of “distress.” Transcript at 58.

(5) On June 5, 2013, claimant reported to the human resources manager that another employee had called him a “fucking faggot” as claimant left work. Transcript at 27. The human resources manager reviewed video footage of claimant leaving work that day, and observed that the other employee was not in claimant’s vicinity.

(6) On July 19, 2013, claimant observed the employee relocating material claimant was expected to pull for inventory the following day. Claimant complained to his lead worker that he would be unable to locate the material. The lead worker telephoned a manager, and then told claimant not to worry because he would not have to pull the product for inventory.

(7) On July 20, 2013, claimant quit work for alleged retaliation in response to his complaints to the human resources department and plant manager.

(8) On or after July 23, 2013, claimant spoke with the plant manager, admitted to “making up a lot of the accusations” against other employees, and apologized for “creating trouble.” Transcript at 51.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

At hearing, claimant alleged that he quit work because his superiors and a coworker retaliated against him for complaining to the employer’s human resources department and plant manager. Transcript at 18. However, claimant established by a preponderance of evidence only that his former supervisor criticized him on one occasion for complaining to the human resources department. The evidence as to whether claimant was threatened or called a foul name was at best, equally balanced. Nor is claimant’s speculation that he was being “set up for failure” on July 19 during the following day’s inventory sufficient to establish that he was. Transcript at 7, 29.

Although inappropriate, the former supervisor’s criticism of claimant for complaining to the human resources department was not so egregious that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant therefore failed to establish that he quit work with good cause, and he is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-09904 is affirmed.

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

**DATE of Service: March 18, 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.