

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0325

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On November 26, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 150608). Claimant filed a timely request for hearing. On February 12, 2014, ALJ Shoemake conducted a hearing, and on February 14, 2014 issued Hearing Decision 14-UI-10471, 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) Seven Feathers Hotel & Casino Resort employed claimant as a snack bar employee from July 23, 2007 to November 3, 2013.

(2) On October 16, 2013, claimant returned from a medical leave of absence. While claimant was on leave, the employer had hired new employees and made changes in how the employees operated its snack bar.

(3) Claimant did not like the changes, and did not always get along with her new coworkers. On one occasion, claimant was about to perform a task, and a coworker told her, "no, I'll do it." and performed the task. On another occasion, a coworker "beat" on the front counter window and yelled at claimant in front of a customer, instructing her to stop stocking and help behind the counter, although claimant did not think the coworker behind the counter needed help.

(4) Claimant repeatedly complained to her supervisor and the employer's food and beverages director. Claimant's supervisor coached claimant and her coworkers on how to better communicate with each other. Claimant did not complain to the employer's human resources department.

(5) On October 28, 2013, claimant notified the employer she was quitting work. On November 5, 2013, claimant quit work due to her coworkers' behavior toward her.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit 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) (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 argued that she quit work due to a hostile work environment, asserting that her coworkers yelled at her, were rude to her, and embarrassed, disrespected and humiliated her in front of customers. Transcript at 7-8. However, claimant showed only that on one occasion, a coworker performed a task claimant intended to perform, and that, on another occasion, a coworker beat on the front counter window and yelled at claimant in front of a customer, instructing her to help another coworker whom claimant believed did not need help. Claimant notified the employer that she was quitting after working with her new coworkers for only twelve days, although her supervisor was coaching claimant and her coworkers on how to better communicate with each other. Nor did claimant complain to the employer’s human resources department. Claimant failed to establish by a preponderance of evidence that her work environment was so oppressive that no reasonable and prudent person would have continued working for her employer for an additional period of time, and allowed her supervisor and, if necessary, the employer’s human resources department, time to resolve the situation.

Absent a preponderance of evidence establishing a hostile work environment, and that the employer was unable or unwilling to change that environment, claimant failed to establish that she quit work with good cause. She therefore is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-10471 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.