

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0355**

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On December 21, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 104116). Claimant filed a timely request for hearing. On February 19, 2014, ALJ Monroe conducted a hearing, and on February 20, 2014 issued Hearing Decision 14-UI-10723, affirming the Department's decision. On March 4, 2013, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090. We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) LaBarre Machines employed claimant as an office assistant from November 21 to November 24, 2013.

(2) On November 21, 2013, the employer's owner and its accountant told claimant that if the salesperson with whom she would be working asked her about her educational background or work experience, she should understate the extent of her education and experience. The owner also asked claimant to act as if she knew less than she did, explaining that he did not want to bruise the salesperson's ego.

(3) Claimant told the owner she would feel uncomfortable understating the extent of her education and experience, and acting as if she knew less than she did. Claimant told the owner that she preferred to not answer if the salesperson asked her about her education, experience and knowledge. The owner did not prohibit claimant from not answering such questions..

(4) Claimant worked with the salesperson on Friday, November 22, 2013. On November 24, 2013, claimant notified the accountant that unless she could disclose the extent of her education, experience and knowledge to the salesperson, she was going to quit work.

(5) Claimant did not report for work as scheduled on November 25, 26 or 27, 2013. On November 27, 2013 she telephoned the employer and asked the owner to return her call. The owner did not return claimant's call. Claimant did not report for work or contact the employer again.

**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). In the present case, it is undisputed that claimant could have continued working for the employer after November 24, 2013 if she had agreed not to disclose the extent of her education, experience and knowledge to the salesperson with whom she worked. The employer did not prevent claimant from continuing to work under that condition. 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). At hearing, claimant asserted that she quit work because she believed not being allowed to disclose the extent of her education, experience and knowledge to the salesperson with whom she worked was unethical. However, "good cause" is defined 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.

The employer's owner instructed claimant not to disclose the extent of her education, experience and knowledge to the salesperson because the owner did not want to bruise the salesperson's ego, and not for an objectively unethical purpose. Nor did the owner prohibit claimant from not answering if the salesperson asked her about her education, experience and knowledge. Although claimant believed not being allowed to disclose the extent of her education, experience and knowledge to the salesperson was unethical, we do not find that restriction so oppressive 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 receiving benefits.

**DECISION:** Hearing Decision 14-UI-10723 is affirmed.

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

**DATE of Service: March 24, 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.