

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0492

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On January 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115837). Claimant filed a timely request for hearing. On March 17, 2014, ALJ Clink conducted a hearing, and on March 21, 2014 issued Hearing Decision 14-UI-13188, affirming the Department's decision. On March 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Kendall Dealership Holdings, LLC employed claimant as a salesperson in one of its dealerships from August 5, 2013 until December 23, 2013.

(2) During claimant's employment, claimant's supervisor was a large, physically imposing man. On occasion, the supervisor yelled at the salespeople, including claimant, if the supervisor was displeased. Claimant grew accustomed to the supervisor's yelling until it did not bother him unduly.

(3) Sometime after August 5, 2013, claimant started to look for work at other of the employer's dealerships because he disliked working at the dealership to which he had been assigned. Claimant applied for jobs at other dealerships when he saw postings on Craigslist. At some point, claimant told a representative in the employer's human resources department that he disliked working with his supervisor and was trying to obtain work at other dealerships. The representative advised claimant that his chances of obtaining a position at another of the employer's dealerships would be enhanced if he used the employment transfer form on the employer's website.

(4) On December 20, 2013, claimant submitted to the employer two transfer request forms in which he asked to transfer to another dealership as a salesperson and he asked to transfer to another dealership in a position unrelated to sales.

(5) On approximately December 21, 2013, claimant was working when a customer drove onto the car lot to look at cars. Claimant greeted the customer. It was the employer's policy that at least two salespeople interact with each customer when the customer was on the sales lot. Claimant was unable to persuade the customer to speak with any other salesperson before the customer left. Claimant's supervisor had observed claimant's interaction with the customer from the sales tower, and banged on a window and told claimant to come inside. The supervisor was angry that claimant had been unable to arrange for the customer to speak with a second sales person. The supervisor "balled up his fists," "banged on his desk" and shouted at claimant. Transcript at 19. When other staff tried to enter the supervisor's office during this time, the supervisor did not allow them. The supervisor told claimant that he was suspended for two days, until December 23, 2013, for policy violations. Claimant then left the supervisor's office. Claimant's encounter with the supervisor on that day lasted "a couple of minutes." Transcript at 19. During the encounter, the supervisor did not physically touch claimant, hit claimant or make hitting or other physical gestures directed at claimant.

(6) On December 23, 2013, claimant's first day of work after the suspension, claimant went to the employer's human resources department. Claimant had determined he was not able to continue working at the same dealership as his supervisor after the incident on December 21, 2013. Claimant asked the human resources representative with whom he had previously dealt to guide him to the correct form to notify the employer of this determination. The representative indicated claimant should use a particular form on the employer's website, a form intended to notify the employer of an employee's work separation. Claimant turned in the only keys he had for work to the human resources representative.

(7) On December 23, 2013, claimant completed the employer's notice of work separation form. In the form, claimant "made very clear" that he was not willing to return to his job at his assigned dealership. Transcript at 31. Claimant described the incident with his supervisor on December 21, 2013. Claimant wrote that December 21, 2013 was his last day working at that dealership. Claimant then wrote, "I am still hopeful to get a chance at another position or another store that his more professional and fairly structured." Transcript at 35. Claimant sent the form electronically to the employer. The employer construed this communication from claimant as a notice he was quitting work. Claimant did not return to work after December 23, 2013.

(8) Continuing work was available for claimant.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant's work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the same employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Claimant contended he did not intend to quit work on December 23, 2013. Even though claimant did not dispute that he submitted a notice of work separation form to the employer, he contended that he was not aware of the title of the form and that the contents of the form should have alerted the employer that he was willing to continue working if he was transferred to a different dealership. Transcript at 13, 14, 29, 35. It is implausible that claimant completed a form intended to notify the employer that he was

quitting and did not know that was the purpose of the form as stated in the form's pre-printed language. Transcript at 14. That claimant turned in his keys before he submitted the form strongly corroborates that he intended to quit work when he transmitted the form to the employer. Transcript at 28. Although claimant might have been willing to continue working for the employer if the employer transferred him to another dealership, the bottom line is that, by claimant's own concession, he was absolutely unwilling to continue working in the job and at the dealership to which the employer had assigned him. Transcript at 27. The preponderance of the evidence shows that claimant intended to resign when he submitted the resignation form to the employer and reasonably understood that the employer would construe the form as such. Moreover, by unequivocally indicating that he was not going to work for the employer unless his job was fundamentally altered, claimant demonstrated that he was unwilling to work under the terms that the employer had hired him. For both reasons, more likely than not, claimant's work separation was a voluntary leaving on December 23, 2013, when he transmitted the standard work separation form to the employer.

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 P3d 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.

Claimant contended he quit work after his interaction with his supervisor on December 21, 2013 because his supervisor's behavior had caused him to fear for his physical safety if he subsequently returned to the workplace without a "police escort or a security guard." Transcript at 22; *see also* Transcript at 20, 21, 23. There is nothing in claimant's testimony suggesting that claimant's stated reaction to the supervisor's behavior was objectively reasonable. Claimant did not mention any past incidents when the supervisor became physical with any other subordinates or with claimant. Claimant did not allude to any statements that the supervisor made threatening a physical attack. Claimant conceded that the supervisor did not touch him during the interaction. Transcript at 23. The interaction was of the very short duration of approximately two minutes. Transcript at 19. Claimant did not describe any conditions he had that might make him especially sensitive to perceived physical threats. Although it was likely unpleasant for claimant when his supervisor was shouting at him and banging the supervisor's desk, a reasonable and prudent person, exercising ordinary common sense, would not have considered his future physical safety at risk when there were no other incidents corroborating that the supervisor had a propensity for physical violence and no statements had been made threatening a physical attack. Based on the incident as described by claimant, a reasonable and prudent person would not have considered it grave, but would most likely have thought the incident was an unusual one that was not likely to recur. Claimant did not meet his burden to establish that the supervisor's very short-lived behavior on December 21, 2013 was good cause to leave work.

Claimant was reasonably aware of the employer's human resource department since he had consulted with it when he was trying to obtain employment at another dealership and when he was preparing to resign. Even if claimant genuinely feared for his physical safety as a result of the supervisor's behavior

or he thought he could not tolerate, for any reason, working any longer with the supervisor, a reasonable and prudent person, exercising ordinary common sense and who wanted to remain working, would not have quit work before trying to resolve his difficulties with his supervisor using the mechanisms of the human resources department. Because claimant did not take the steps that a reasonable and prudent person would have taken, claimant also did not show good cause for quitting work when he did.

Claimant did not demonstrate good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-13188 is affirmed.

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

**DATE of Service:** April 22, 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>.

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