

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0519

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 155607). Claimant filed a timely request for hearing. On March 26, 2014, ALJ Lewis conducted a hearing, and on March 28, 2013 issued Hearing Decision 14-UI-13767, affirming the Department's decision. On April 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) CPM Development Corporation employed claimant as a data entry parts clerk from 2006 to January 10, 2014.

(2) Claimant shared office space with her supervisor and a coworker. The coworker sometimes made sarcastic comments about claimant. On one occasion, claimant was mopping the floor and the coworker commented that the employer finally found a job claimant was qualified to perform. On another occasion, claimant jokingly called herself a genius after resolving a computer software issue, and the coworker commented that they should "write that on the board and date it." Audio Record at 36:00. Claimant did not complain to the employer about the coworker's comments at the time.

(3) On one occasion prior to December 2013, the coworker kicked a hole in the wall behind claimant's desk. Claimant did not report the incident to the employer at the time.

(4) In early December 2013, claimant was sitting at her desk and commented that she wished she knew more about parts so that when she "called them in," she knew what she was talking about. Audio Record at 27:00. The coworker replied, "I'll just do it," and slammed his hand on claimant's desk. Audio Record at 26:30. Frightened, claimant left the area, told her supervisor that he needed to "take care" of the coworker, and left work. Audio Record at 24:15.

(5) The next day, claimant complained about the incident to her supervisor's supervisor, the equipment manager. The employer suspended the coworker for two days without pay, and allowed claimant two days off with pay.

(6) On January 7, 2014, who was sweating from work, entered the lunch room, and commented that it was "hot in here." Audio Record at 28:00. The coworker replied, "That's because you're finally doing some work around here." Audio Record at 28:00. Claimant's supervisor overheard the comment, but did not intervene. Claimant left the lunch room.

(7) On January 8, 2014, claimant complained about the incident to the equipment manager. The equipment manager told claimant he would speak to the coworker about the incident. Claimant then complained to the employer's senior human resources representative about the coworker's behavior on January 7, 2014 and prior occasions, asserting she was afraid of the coworker. The human resources representative told claimant to give her some time, and the employer would find a solution.

(8) On January 10, 2014, claimant notified her supervisor she was quitting work due to her coworker's behavior. Her supervisor offered to move her to another office so that he did not have to deal with the coworker in person. Claimant declined the offer because she still would have to communicate with the coworker by email or telephone.

(9) Claimant quit work due to her coworker's behavior toward her.

**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 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).

At hearing, claimant asserted that she could no longer work with her coworker. However, the good cause 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. Claimant failed to show that no reasonable and prudent person would have accepted her supervisor's offer to move her to a new office so that she did not have to deal with the coworker in person, and would have allowed the employer's human resources department time to address the coworker's behavior. The employer had suspended the coworker after claimant reported the December 2013 incident and, absent a showing that it was unwilling or unable to address her complaint about the coworker's behavior on January 7, 2014 and prior occasions, we cannot find that claimant had no reasonable alternative but to quit.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-13767 is affirmed.

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

**DATE of Service:** April 21, 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.