

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0632**

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On December 6, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 161432). Claimant filed a timely request for hearing. On February 12 and 27, 2014, ALJ Vincent conducted a hearing, and on March 27, 2014 issued Hearing Decision 14-UI-13529, affirming the Department's decision. On April 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Mini Pet Mart employed claimant as a retail salesperson at its Newport, Oregon store from February 17 to October 31, 2013.

(2) On October 31, 2013, the employer's Eugene, Oregon store manager, Chris Race, arrived at the Newport store and discharged the Newport store manager, Nick Davey. After Mr. Race informed claimant that he was being discharged, Mr. Davey asked Mr. Race why. Mr. Race would not tell Mr. Davey why he was being discharged, and the two argued outside of the employee break room.

(3) Claimant overheard the argument, entered the break room, and clocked out of work. Mr. Race followed claimant into the break room and asked her what she was doing. Claimant told Mr. Race she was clocking out. Claimant and Mr. Race argued, and then claimant started to leave work with Mr. Davey. Mr. Race asked claimant if leaving work meant she was resigning, and claimant stated that it did. Transcript at 33, 35.

(4) After leaving the store, claimant went to her vehicle and telephoned the employer's owner to discuss the situation. The owner's secretary told claimant the owner would return her call. The owner did not return claimant's call. On November 1, 2013, claimant did not report for work as scheduled, and telephoned the owner two more times to discuss the October 31 incident. The owner later returned claimant's calls, told claimant she no longer worked for the employer, and that she could pick up her final paycheck any time.

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

The first issue in this case whether claimant quit work or was discharged. 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 work separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the separation is a quit. OAR 471-030-0038(2)(a). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At hearing, claimant argued that the employer's owner discharged her during their November 1, 2013 telephone conversation. Transcript at 5. However, it is undisputed that when claimant started to leave work with Mr. Davey on October 31, 2013, and when Mr. Race asked claimant if that meant she was resigning, claimant stated that it did. Transcript at 33, 35. The preponderance of evidence therefore establishes that claimant could have continued to work for the employer, but was unwilling to do so. Claimant therefore severed the employment relationship on October 31, 2013, and quit work on that date. The fact that claimant apparently was willing to rescind her resignation if the owner resolved the situation to her satisfaction, and that the owner instead acknowledged that claimant no longer worked for the employer, does not change the nature of the work separation to a discharge. *See accord Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999) (claimant quit even though he changed his mind about leaving and the employer refused to allow him to rescind his resignation).

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). "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 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.

At hearing, claimant testified that she left work on October 31, 2013 because of Mr. Race's behavior toward her. Transcript at 5. However, the preponderance of evidence shows that claimant already had decided to quit work when she clocked out, before she and Mr. Race argued, because Mr. Race discharged Mr. Davey and would not tell him why he was being discharged. In addition, the evidence as to who behaved inappropriately – Mr. Race or claimant – was, at best, equally balanced. Transcript at 10-13, 24, 28, 34-35; Exhibit 1 at 5. Claimant failed to show by a preponderance of evidence that Mr. Race's behavior toward her or Mr. Davey was so egregious that no reasonable and prudent person would

have continued to work for her employer for an additional period of time. Absent such a showing, claimant failed to establish that she quit work with good cause. Claimant therefore is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-13529 is affirmed.

Susan Rossiter and J.S. Cromwell, *pro tempore*;  
Tony Corcoran and D.E. Larson, not participating.

**DATE of Service:** May 20, 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.