

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0895**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74245). The employer filed a timely request for hearing. On May 13, 2014, ALJ M. Davis conducted a hearing, and on May 14, 2014 issued Hearing Decision 14-UI-17608, reversing the Department's decision. On May 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written arguments when reaching this decision. EAB did not consider the employer's written argument because the employer failed to certify that it served a copy of the argument on the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006).

**FINDINGS OF FACT:** (1) Monaghan's Landscape Maintenance, Inc. employed claimant as an office manager from July 25, 2007 until February 27, 2014. In her job, claimant was responsible for keeping track of the employer's finances, including performing bookkeeping, payroll and banking functions.

(2) Claimant and the employer's president had known each other and been friends for over twenty-six years. In the course of claimant's employment, the employer had several financial issues. Claimant and the president had many heated discussions about the employer's finances and its expenditures. On February 21, 2014, the president expressed dissatisfaction with the way claimant was performing her financial functions. The president told claimant that he thought she was too secretive about the employer's finances and did not provide complete financial information to him when he asked for it.

(3) On February 27, 2014, after the president arrived at the office, claimant told him that she wanted to talk more about the employer's finances. Since claimant's office did not have a chair for him to sit in, the president brought a small folding chair with him into claimant's office. The president set the folding chair approximately five feet in front of claimant's desk and sat in it. As they further discussed the employer's finances and expenditures, both the president and claimant became frustrated with each other. The president told claimant that he was becoming suspicious of her because it was so difficult for him to obtain information from her about the balances in the employer's bank accounts. The president told claimant that "possibly she was being dishonest." Transcript at 16; *see also* Transcript at 7, 8. Claimant asked the president if he wanted her to continue working for the employer. Transcript at 7. Claimant told the president that he could look at the employer's bank statements himself to determine where the employer's funds were being spent. Transcript at 7. At that point, the president became upset. He stood, picked up the small folding chair he had been sitting on and pitched it in a direction away from claimant, out the door of claimant's office into a hallway. The president then left claimant's office and slapped a wall in the office as he was leaving. As the president was leaving her office, claimant told him "I'm out of here." Transcript at 27-28; *see also* Transcript at 16. . Shortly afterward, claimant left the workplace. Before she left, claimant walked to the doorway of the president's office and told him that she thought that "he sold his soul to the devil." Transcript at 13, 19. On February 27, 2014, claimant left the workplace and did not return.

(4) With the exception of the single incident on February 27, 2014, the president had never expressed his displeasure or frustration through physical actions in the workplace.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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 P3d 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 contended at hearing and in her written argument that she quit work because she was afraid after the president's behavior, which she characterized as "workplace violence." Transcript at 12, Written Argument at 1, 2, 3. That claimant was actually fearful for her physical safety is doubtful since, after the president had pitched the chair out of her office, she went to his office, confronted him and accused him of selling his soul to the devil. A person who was actually fearful would not have taken such a potentially provocative step. Even if we accept that claimant was subjectively afraid, there was nothing in claimant's testimony that suggested that such a reaction to the president's behavior was objectively reasonable. Claimant did not mention any past incidents when the president became physical with any other subordinates or with her. Indeed, claimant testified that such behavior had never before occurred. Transcript at 8, 10. Claimant did not allude to any statements that the president made to her reasonably threatening a physical attack on her. The president did not touch claimant during the interaction and the president's physical activity, including tossing the chair and slapping the wall, were

in a direction away from where claimant was sitting. The interaction was of very short a duration and from the testimony it appears that the president left claimant's office immediately after tossing the chair out the door. Claimant did not describe any conditions she had that made her especially sensitive to perceived physical threats. Although it was likely unpleasant for claimant when the president expressed his upset that day through physical actions directed at a chair, nothing suggests that the president's actions were other than an aberration. A reasonable and prudent person, exercising ordinary common sense, would not have considered her future physical safety at risk when there were no other incidents corroborating that the president had a propensity for physical violence and there was nothing about that particular incident that indicated an imminent physical attack on her. 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 that the incident was unusual, out of character and not likely to recur. Claimant did not meet her burden to establish that the president's very short-lived behavior on February 27, 2013 was good cause to leave work.

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

**DECISION:** Hearing Decision 14-UI-17608 is affirmed.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service:** July 8, 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.