

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1048

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81152). Claimant filed a timely request for hearing. On June 6, 2014, ALJ Vincent conducted a hearing, and on June 13, 2014 issued Hearing Decision 14-UI-19632, affirming the Department's decision. On June 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Tenmile Spirits & Supplies employed claimant as a clerk from August 12, 2014 until April 7, 2014. The employer operated a liquor store that also sold some general merchandise.

(2) When claimant was hired, the employer's owner told her that, when she worked, she was often going to be the only employee on duty, and that she needed to take bathroom breaks, rest breaks and meal breaks during interludes between customers. For claimant's bathroom breaks, the owner expected claimant to lock the store door and post a sign on the door alerting customers that she would return shortly. During her employment, claimant never complained to the employer that she thought she was not receiving the breaks to which she was legally entitled.

(3) Sometime before April 7, 2014, claimant developed an abscessed tooth. Because claimant received her health insurance through the Oregon Health Plan, there was a long wait before she could arrange for an appointment with a dentist. On Friday, April 4, 2014, claimant finally was able to schedule an appointment with a dentist for Monday, April 7, 2014.

(4) On Monday, April 7, 2014, sometime after 7:00 a.m., claimant sent a text message to the employer's owner asking her if she could trade her scheduled shift on that day for a shift on Thursday, April 10, 2014 because "I want to go to this appointment for my tooth. Let me know as soon as you can." Transcript at 21. At 8:13 a.m., the owner responded by text message, "Not today." *Id.* Claimant

responded on at 8:14 a.m., "So I can't go to the doctor appointment?" *Id.* At 8:19 a.m., the owner replied, "Not good timing." *Id.* At 10:21 a.m., claimant sent a text message to the owner telling her "I can't do this anymore" and "I'm quitting today." *Id.*

(5) On April 7, 2014, claimant voluntarily left work.

**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 that she quit work because the employer's owner did not give her time off from work for the dental appointment she had scheduled on April 7, 2014 and because the employer did not provide her the breaks she was legally entitled to receive. Transcript at 4, 8, 9. Although claimant first testified that she had given the owner three days' notice of her scheduled dental appointment, claimant did not dispute the accuracy of the April 7, 2014 text message evidence that the owner presented at hearing. Transcript at 7, 21. It appears, more likely than not, that claimant first asked for time off to attend the April 7, 2014 dental appointment on the morning of April 7, 2014. There was nothing in those text messages that reasonably alerted the owner that claimant was experiencing a dental emergency, or that exigent circumstances compelled her to ask for time off on that day. A reasonable and prudent employee in claimant's situation, exercising ordinary common sense, would not have concluded that she needed to quit work when the owner did not give her time off for the dental appointment until first informing the owner that her dental needs required immediate attention or that there were other exigent circumstances underlying her request, and determining that the owner still would not allow her the time off.

To the extent that claimant quit work because she thought the owner was not providing the legally required breaks, claimant did not show, more likely than not, that the employer was not subject to the "undue hardship" exception to providing employee breaks. *See* OAR 839-020-0050(3)(a). In addition, a reasonable and prudent employee, exercising ordinary common sense, who thought she was not receiving the breaks to which she was legally entitled, would not have concluded that she needed to quit work over allegedly unlawful employment conditions before first notifying the owner of her concerns and determining that the owner would not rectify those conditions. Because claimant did not take the actions of a reasonable and prudent person, she did not show that she had objectively grave reasons of leave employment.

Claimant did not demonstrate that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-19632 is affirmed.

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

**DATE of Service:** July 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 [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.

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