

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1267

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 150740). Claimant filed a timely request for hearing. On July 8, 2014, ALJ Monroe conducted a hearing, and on July 16, 2014, issued Hearing Decision 14-UI-21634, affirming the administrative decision. On July 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Surge Staffing employed claimant from March 10, 2014 to May 12, 2014, last as a branch manager.

(2) Some time before claimant's May 12, 2014 work separation, the employer placed a new employee in the office claimant managed so that the employee could observe and learn about the employer's business processes. The new employee became upset by negative comments claimant made about the employer, and on May 12, called the employer's district manager to report that claimant was saying "horrible things" about the employer. Transcript at 11.

(3) On May 12, 2014, the district manager called claimant and asked that claimant meet with her and the employer's vice president on May 13, 2014. The district manager had no intention of discharging claimant at this meeting, but wanted to talk with claimant about the negative remarks that claimant had made about the employer. Although the district manager told claimant that the purpose of the meeting was to discuss claimant's performance, the district manager refused to answer claimant's repeated questions about the specific subjects that would be discussed at the meeting. The district manager believed that it was inappropriate to discuss such matters over the telephone.

(4) After talking with the district manager on May 12, claimant concluded that the employer planned to discharge her at the May 13 meeting. Claimant knew that the district manager had concerns about her

performance on the job, and believed that the employer wanted to terminate her employment for this reason. At approximately 4 p.m. on May 12, 2014, claimant called the district manager and told her that because she was not “going to sit around and wait to be fired,” she was quitting her job. Transcript at 16.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude 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 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.

The parties agree that claimant voluntarily left work on May 12, 2014, but disagree as to why she did so. Claimant asserts that she quit her job on May 12, 2014 to avoid suffering through a meeting at which she would be discharged on May 13, 2014. Claimant contends that during a May 12 telephone conversation, the district manager told her that “it [the job] wasn’t working out”; based on this and other comments, claimant decided “they were going to let me go” at a May 13 meeting the district manager wanted to schedule with claimant. The employer, however, insists that claimant’s belief that she would be discharged was mistaken. According to the employer, the district manager had no intention of discharging claimant and never indicated that she planned to do so when she spoke with claimant on May 12. The district manager asserts that she wanted to meet with claimant and the employer’s vice president to discuss inappropriate remarks claimant had made to a new employee.

Absent a reason for disbelieving the sworn testimony of the employer’s district manager, the evidence as to why claimant left work is equally balanced. When the evidence is equally balanced, the party with the burden of persuasion – here, the claimant – has failed to satisfy its evidentiary burden. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). The record therefore shows that claimant quit her job because she mistakenly believed her discharge was imminent.

To the extent claimant voluntarily left work on May 12, 2014, because she incorrectly assumed that the employer would discharge her on May 13, 2014, claimant failed to show she had good cause for quitting her job. Rather than leaving work, claimant could have determined whether her assumption was correct by meeting with the employer’s district manager and vice president. Claimant failed to meet her burden to demonstrate that she had no reasonable alternative but to leave work on May 12, based on the mistaken belief that the employer would no longer allow her to work after May 13.

Claimant did not have good cause for voluntarily leaving work and is disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Hearing Decision 14-UI-21634 is affirmed.

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

**DATE of Service: August 18, 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.