

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1829

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 75125). Claimant filed a timely request for hearing. On November 7, 2014, ALJ Vincent conducted a hearing, and on November 24, 2014 issued Hearing Decision 14-UI-29203, affirming the Department's decision. On November 26, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Red White and Blue Thrift Store employed claimant from January 12, 2013 to September 9, 2014.

(2) During the course of claimant's employment, the employer's store manager sometimes lost his temper and threw things. On two occasions in July 2014, the store manager yelled that the employees were lucky that he did not have a gun. On another occasion, the store manager was carrying wrapping paper, and claimant asked him if he had a present. The store manager replied that he had a bag claimant could put over her head. Claimant stated that that was not very nice, and the store manager suggested a plastic bag that claimant could tie very tight.

(3) On another occasion, claimant took a day off from work to care for her sick child. When other employees asked the store manager why claimant was not at work, the store manager told them the reason, and stated that claimant was "worthless." Audio Record at 9:30.

(4) Claimant did not complain to the store manager about his behavior. As claimant was aware, the employer operated several thrift stores and had an employee handbook. However, claimant did not contact another store manager or read the employee handbook to determine how she could file a complaint against her store manager. The employee handbook gave employees two telephone numbers they could call to file a complaint against their manager or supervisor.

(5) Claimant quit work due to her store manager's behavior during the course of her employment.

**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). 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.

Rather than quit work, claimant could have complained to her store manager about his behavior, or contacted another store manager or read the employee handbook to determine how she could file a complaint against her store manager, and then done so. At hearing, claimant testified that, based on her store manager twice yelling that employees were lucky he did not have a gun, she was afraid he would come to work with a gun and become violent. Audio Record at 6:00. However, the store manager testified he attributed his behavior on those and other occasions to a combination of frustration and attempts at humor. Audio Record at 16:00. We find it unlikely that claimant would have continued to work for the employer for over one month if she sincerely was afraid he would come to work with a gun and become violent. Nor do we find the store manager's behavior otherwise so egregious that no reasonable and prudent person would have attempted to resolve the situation before quitting. Finally, claimant did not assert, and the record does not show, that attempting to resolve the situation directly with her store manager or through other means would have been futile. Absent such showings, claimant failed to establish that she had no reasonable alternative but to quit.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 14-UI-29203 is affirmed.

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

**DATE of Service:** January 6, 2015

**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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