

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1836

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 75237). The employer filed a timely request for hearing. On November 21, 2014, ALJ Shoemake conducted a hearing, and on November 28, 2014, issued Hearing Decision 14-UI-29544, concluding that claimant voluntarily left work without good cause. On December 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was relevant and based on the record.

**FINDINGS OF FACT:** (1) CC Services, Inc. employed claimant as an administrative assistant from February 10, 2014 until September 12, 2014.

(2) Shortly after claimant began working for the employer, her co-worker, RT<sup>1</sup> told her that she looked like Katy Perry, who he thought was very beautiful. RT began calling claimant "Katy." Claimant considered RT's comments to be flirtatious, and said nothing to him.

(3) A few weeks after the Katy Perry comments, RT pointed to claimant's shirt, which was bulging slightly at a button, and told claimant it made him uncomfortable. RT's finger was approximately two to three inches away from the button at which he was pointing. RT told claimant that "if I wasn't married, I would say something else." Transcript at 12. RT's remarks made claimant very uncomfortable, and she spoke to her manager's assistant. The manager's assistant had no supervisory

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<sup>1</sup> "RT" is a pseudonym.

responsibilities over claimant, but claimant believed the assistant would tell the manager about claimant's concerns. The manager's assistant told claimant she would take care of the problem.

(4) Sometime in June 2014, RT became angry over an interaction with a co-worker; he used foul language and slammed his phone down on his desk. In addition, he slammed the door to his office so hard that a picture on claimant's wall fell down. (At the time this incident occurred, claimant's desk was located approximately 10 feet from RT's office door). Claimant spoke to the agency manager about this incident. The agency manager was aware of and concerned about the behavior of RT and another employee. The manager asked claimant to provide him with documentation of all incidents of inappropriate behavior by RT so that the manager could talk with RT about his behavior. Claimant never provided the manager with any of the documentation he requested.

(5) On June 7, 2014, the manager met with RT, told him he needed to stop his inappropriate behavior, and gave RT 60 days to move out of the agency. Claimant was aware that RT would be leaving the agency.

(6) After claimant spoke to the agency manager, RT regularly walked by claimant's desk and whispered "bitch" to her as he walked by. Transcript at 15. RT made these remarks to claimant approximately three to four times a week. Claimant spoke to the manager's assistant about RT, who said she would talk with claimant's manager about the problem. Claimant did not speak directly to her manager or contact the employer's human resources department because she was fearful of "making waves in my job." Transcript at 15. RT continued making remarks to claimant after her conversation with the manager's assistant.

(6) On August 8, 2014, the agency manger met with claimant to discuss her attendance. Although the manager had previously agreed that claimant could have time off from work to tour with her rock band, he was now concerned about her absences and believed that they were affecting her work performance. Claimant and the manager did not discuss any concerns about RT's behavior at this meeting.

(7) On August 27, 2014, RT began wrestling with a co-worker. Claimant was upset and shocked by the level of aggression RT was displaying. RT looked and claimant and said "What the fuck are you looking at?" Transcript at 7.

(8) On August 28, 2014, claimant met with her manager. The manager discussed his continuing concerns about claimant's attendance and performance, and also discussed claimant's discomfort with RT's behavior. Claimant told her manager that she did not feel that anything had been done to make her work environment more comfortable. Claimant did not tell the manager about the aggressive horseplay on August 27 in which she had seen RT engaging, and RT's comment to her. The manager offered to move her desk away from RT's office; the new location would have placed claimant's desk approximately 50 to 75 feet from RT's office. Claimant agreed to the move, but said it was only a partial solution because "it was a behavioral issue and not a location issue." Transcript at 9 and 11. The manager told claimant that she should take time to decide whether she wanted to continue working for the employer, and claimant agreed to do so.

(9) On August 29, 2014, claimant gave the employer written notice that she was resigning her position, effective September 12, 2014. In her notice, claimant stated that she was resigning because she

considered her work environment to be “unsafe” and she did not feel the employer had taken appropriate steps to make her feel more comfortable. Transcript at 6. The employer accepted claimant’s resignation and her last day of work was September 12.

**CONCLUSION AND REASONS:** We agree with the ALJ that 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 evidence, that he 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 voluntarily quit her job because she believed her work environment was “unsafe” on account of the behaviors of RT, a co-worker whose office was located close to claimant’s desk at the time of her resignation. RT’s behavior – making remarks of a suggestively sexual nature regarding claimant’s clothing, using foul language and angrily slamming a telephone and a door, and rudely challenging claimant when she saw him engaging in aggressive horseplay with a co-worker – understandably made claimant uncomfortable and apprehensive. While RT’s actions may have created a grave situation for claimant, she had reasonable alternatives to quitting her job. Claimant had the reasonable alternative of reporting all incidents of RT’s inappropriate behavior to the agency manager or the employer’s human resources department; claimant failed to do so, even after the manager asked her to provide him with these reports. Claimant had the reasonable alternative of trying out the manager’s proposed relocation of her desk to see if it would have shielded her from RT’s behavior; she quit her job without ever seeing if such a move would have improved her work environment.

In her written argument, claimant asserts that claimant attempted to address her problems in the workplace when she “continually reported the ongoing abusive behavior [of RT] to her superior,” the manager’s assistant. According to claimant, she reasonably believed that the manager’s assistant had apparent authority to act upon and resolve her complaints. Contrary to claimant’s assertion, the record shows that claimant knew and understood that the agency manager was the appropriate person to whom her complaints should be addressed. Claimant testified that she knew the assistant was not in a management position, and that she was told she could bring her questions and concerns to the agency manager. Transcript at 13 and 20. In June, claimant spoke to the manager about her problems with RT, because she felt she needed to address her concerns more “directly.” Transcript at 19. Accordingly, we find it more likely than not that claimant knew that the most effective solution to addressing her problems with RT was to talk to and work with the agency manager. Claimant, however, did not accept the manager’s request that she document incidents of RT’s inappropriate behavior, and refused to try out his proposal to relocate her desk. Because claimant failed to pursue these options, she failed to demonstrate that she had no reasonable alternative to her uncomfortable work environment other than to voluntarily leave her job.

We conclude that claimant voluntarily left work without good cause and is disqualified from benefits.

**DECISION:** Hearing Decision 14-UI-29543 is affirmed.

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

**DATE of Service:** January 13, 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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