

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1899

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 71711). Claimant filed a timely request for hearing. On December 3, 2014, ALJ Lohr conducted a hearing and issued Hearing Decision 14-UI-29763, affirming the Department's decision. On December 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Lithia Motors Support employed claimant from August 2, 2014 until October 11, 2014, last as a used car technician.

(2) Claimant inspected and repaired used cars. After claimant's schedule was changed to require her to work four ten hour shifts each week, from 6:00 a.m. until 5:00 p.m., claimant sometimes worked less than forty hours per week because the technician who had the keys to open the employer's shop did not show up for work until 8:00 a.m. When this happened, claimant left the shop after arriving at 6:00 a.m., went home and returned to the shop at 8:00 a.m. Claimant disliked doing so and considered it inconvenient. Claimant thought that it was unfair that she was not paid for the two hours that she could not work because of the late arrival of the other technician. Claimant was also displeased with the hours of work she was assigned.

(3) Throughout the two months that claimant was employed, claimant shared a car lift with another technician. This other technician often left cars on the shared lift for extended periods when claimant wanted to use the lift for the cars on which she was working. Claimant perceived that the other technician allowed his cars to remain on the lift when he was not actively working on them, but socializing with other technicians. Claimant thought that the other technician monopolized the lift to "spite" her. Audio at ~18:22. As a result of the other technician's behavior, claimant had to work on the cars assigned to her by laying underneath them on the shop floor. Claimant complained to the car manager and the service manager about the other technician and her suspicion that he was behaving as

he did to annoy her. Once, one of the managers talked to the other technician after claimant complained about the length of time the technician had left a car on the lift. The technician denied that he had left car up on the lift for no legitimate reason, and explained that he had left the car on the lift because, after he started to repair it, he realized that he was given the wrong parts to complete the repair and needed to wait for the correct parts to arrive. Afterward, whenever claimant complained to the managers about the other technician's monopolization of the lift, they "pretty much brushed it off" or "pretty much told [her] to suck it up." Audio at ~8:05, ~16:13. Claimant thought that it was unfair that she was unable to use the lift when she needed to repair cars and that she had to lay on the shop floor to perform her work.

(4) Once, claimant suggested to the service manager that purchasing additional supplies would increase the shop's productivity. The manager did not immediately implement claimant's suggestion. Later, when a male technician made the same suggestion, the service manager acted in it. Sometimes the service manager did not assign particular work to claimant, but gave that work to a male technician. Claimant thought that she was being discriminated against because she was female while most technicians were male.

(5) Although claimant was aware of the identity of the employer's general manager, she did not complain to him about the failure of her immediate managers to act after she complained about the other technician, the work assignments she did not receive or her suspicion that the managers were discriminating against her. Claimant concluded that the general manager would not assist her because she assumed that he would be biased in favor of her immediate managers.

(6) On October 11, 2014, another technician told claimant that the technician with whom she shared the car lift was going to come into work that day, even though he was not scheduled for work. Claimant assumed that the other technician would again monopolize the car lift. Claimant told the used car manager or the service manager or both of them that she was quitting work immediately. As her reasons for quitting, claimant stated that she did not want to work without a lift and that she did not think that she was receiving enough work. Audio at ~8:05.

**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.

As justifications for leaving work, claimant presented a long list of dissatisfactions with the workplace. However, claimant testified that the event that precipitated her decision to leave work on October 11, 2014 was learning that the technician with whom she shared the car lift was going to work that day, and she assumed that he would again take over the lift and inconvenience her. Audio at ~15:00. It appears that the behavior of the other technician, and the alleged failure of claimant's managers to control it, was

the proximate causes of claimant's decision to leave work. The analysis of whether claimant had good cause to leave work appropriately focuses on the objective gravity of those causes.

It does not appear that the behavior of the other technician, even if unchecked by claimant's managers, was a grave reason for claimant to leave work. While claimant was understandably inconvenienced and annoyed by it, nothing in her description of it or its impacts suggests that it was likely harmful or injurious to her or even that it jeopardized her ability to adequately perform her job duties. Moreover, it is not unusual for employees who share a workspace to have conflicts over their respective uses of that shared space and most do not quit as a result. Because claimant did not present evidence showing that the behavior of the other technician caused her to confront objectively grave circumstances, claimant did not meet her burden to show that it was good cause for leaving work when she did. In addition, although claimant generally contended that she complained repeatedly to the used car manager and the service manager about the manner in which the other technician dominated the use of the car lift, the only specific evidence she provided of a complaint was when the other technician had a legitimate reason for leaving a car on the lift while he was waiting for parts. Audio at ~18:04. Claimant did not contend that the technician's reason for leaving the car on the lift on that occasion was a pretext, and did not show, with specific evidence, that she complained to the managers on occasions when the technician's reasons for leaving a car on the lift were obviously irrational or arbitrary or undertaken only to annoy her. Absent a showing that the managers did not take action when claimant's complaints about the technician's practices were at least arguably justified, claimant's stated belief that it was futile to complain to the managers was not objectively well-founded. On this record, a reasonable and prudent employee, exercising ordinary common sense, would not have objectively concluded that she needed to leave work as a result of the other technician's behavior until she brought it to the attention of the managers or had some reasonable basis to conclude that seeking the assistance of the managers was futile.

Claimant's contention that she was discriminated against in the workplace because she was a female car technician raises a serious issue. However, claimant did not present sufficient evidence about the manner in which the managers assigned work to support an inference that their practices were discriminatory or had a disproportionately gender-specific impact. There are many neutral reasons that the managers might not have assigned particular work to claimant, including a relative lack of experience or that she had only worked a short period of time for the employer. Because the evidence that claimant presented did not rule out these explanations, claimant did not show that the managers' actions were likely discriminatory. On the facts as described by claimant, a reasonable and prudent employee, exercising ordinary common sense, would have ruled out any gender-neutral reasons for the managers' allocation of work before concluding that she was being discriminated against and that she needed to leave work for this reason. As well, claimant did not present any specific evidence that the employer's upper management, including the general manager, condoned gender discrimination in the workplace or that, for some other specific reason, it would have been futile for her to complain to upper management about the perceived discrimination of her immediate managers. On this record, a reasonable and prudent employee, exercising ordinary common sense, would not have concluded that she needed to leave work over the perceived discrimination of her immediate managers until she had first raised her concerns with the general manager or the employer's other upper management or had an objective basis for concluding that it was futile to give the employer an opportunity to correct the situation.

Claimant did not meet her burden to show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-29763 is affirmed.

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

**DATE of Service:** February 5, 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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