

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1907

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143957). Claimant filed a timely request for hearing. On December 1, 2014, ALJ Lohr conducted a hearing, and on December 2, 2014 issued Hearing Decision 14-UI-29669, affirming the Department's decision. On December 16, 2014, ALJ Lohr issued Hearing Decision 14-UI-30429, amending Hearing Decision 14-UI-29669 to correct an omission in the Order portion of the hearing decision. On December 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Concept Retail, Inc., a neighborhood grocery store, employed claimant as a deli worker and cashier from April 9, 2014 to July 20, 2014.

(2) Several times during her employment, claimant complained to her supervisor or managers about a particular coworker she worked with in the deli about reporting to work late or leaving work early, not doing her share of the work and making claimant's job more difficult. Claimant did not believe the employer's management responded to her complaints.

(3) On or about July 19, the coworker in question came to work late and left work early leaving the deli short-handed and claimant again complained. On July 20, the employer's president along with an assistant manager called claimant into the office to discuss her complaints. Claimant stated that she was "sick and tired of employees always being late." Transcript at 30. When the president raised his voice at her and told her not to point fingers because claimant often reported late to work and he believed she had not been truthful when she completed her employment application, claimant became upset because the president appeared angry and the discussion had moved away from the poor working conditions in the deli caused by the coworker. After approximately three minutes in the office, claimant stated, "I've had enough of this" and walked out. Transcript at 30. The president followed her outside and told her that by leaving she was quitting her job and would not get unemployment. Claimant did not respond and left.

(4) Claimant quit work because she felt “threatened” by the president’s behavior during the July 20 meeting. Transcript at 9. The president did not stand over claimant while talking to her in the office and the assistant manager did not block the door when claimant left the office.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). 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 in her circumstances would have continued to work for the employer for an additional period of time.

Claimant and the employer’s president differed at hearing when describing the behavior of the president and assistant manager in the employer’s office on July 20. Claimant asserted the president “was standing like above me” when he raised his voice and she had to ask the assistant manager to “move away from the door” to exit the office both of which the president denied based on his review of video of the entire conversation both inside the office and outside the store. *Cf.* Transcript at 10, 13, 31, 34. On this record, we find no reason to doubt the credibility of either party. Where, as here, the evidence is no more than evenly balanced, we resolve facts in dispute against the party with the burden of proof. In a case of voluntary leaving, that burden is on claimant. Claimant failed to show that the president and assistant manager positioned themselves in the intimidating manner claimant described while claimant was in the office on July 20.

Claimant left work because she felt “threatened” by the president’s behavior during the July 20 meeting. However, claimant admitted she felt “verbally” rather than physically threatened and only told the president she was “uncomfortable” with his inquiries. Transcript at 12-13. Moreover, she did not dispute that she had been tardy several times herself or that the president told her he would speak to the employee claimant was complaining about. Viewed objectively, claimant failed to show that no reasonable and prudent person in the circumstances she described, interested in maintaining her employment, would have chosen not to leave the premises when she did and continued to work for the employer for an additional period of time.

Claimant also implied she left work because she felt she was being retaliated against for refusing a sexual advance from the assistant manager. Transcript at 15-16. However, she asserted the assistant manager asked her to have sex with him in June and discontinued the behavior that made her uncomfortable when she told him to stop. Transcript at 19. Moreover she did not assert or show that she ever spoke to the president about the behavior in question. Accordingly, claimant failed to establish that the assistant manager’s alleged behavior, which stopped after claimant complained to him, constituted a circumstance of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded she had no reasonable alternative but to leave work.

Claimant had the burden to show that she quit work when she did with good cause as defined under OAR 471-030-0038(4). Claimant failed to meet her burden and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 14-UI-29669 is affirmed.

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

**DATE of Service:** February 3, 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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