

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0774**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135731). Claimant filed a timely request for hearing. On June 8, 2015, ALJ Seideman conducted a hearing, and on June 9, 2015 issued Hearing Decision 15-UI-39790, affirming the Department's decision. On June 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Health Services Group ODS Tower employed claimant as a pharmacy customer service representative from January 3, 2011 to April 7, 2015.

(2) Claimant felt that a supervisor, Nancy, nitpicked claimant's work performance and singled claimant out for poor treatment. In 2013, claimant complained to the human resources manager about Nancy, but felt that nothing was done to resolve her concerns. Claimant felt tempted to leave her job on many occasions, but felt bound to her job with the employer because she believed that a new employer would not provide her with the same kind of flexibility and time off work the employer offered her to attend to her health needs.

(3) On April 6, 2015, the employer moved claimant to a desk near Nancy's. Claimant felt uncomfortable being in proximity to Nancy, felt that Nancy would resume micromanaging her, and asked not to move to that location. The employer required claimant to move despite her concerns.

(4) On April 7, 2015, Nancy overheard claimant during a customer service calls and began to critique claimant. Claimant complained to her supervisor that it was inappropriate for Nancy to have done that. Claimant's supervisor offered to speak with Nancy about the incident. Claimant thought Nancy would be upset or retaliate against her if that occurred, and said she did not want the supervisor to speak with Nancy. She did not talk to human resources because she thought she could lose her job if she did.

Shortly thereafter, claimant and some coworkers exchanged emails complaining about Nancy. The same day, the employer inadvertently discovered those email exchanges when reviewing another employee's emails for unrelated reasons, including one in which claimant wrote, "I think [claimant's supervisor] knows I am dead serious about quitting on the spot if this continues." Exhibit 16.

(5) Claimant's supervisor called claimant into a meeting with the supervisor and Nancy to discuss the emails, which the employer considered inappropriate. The supervisor and Nancy told claimant that they were going to investigate claimant's email and instant messages dating back to 2011. Claimant felt as though the employer's scrutiny of her would be ongoing, unfair, and would interfere with her ability to do her job. Claimant believed that Nancy had effectively told claimant she would never receive a promotion at work, and was upset by that and her supervisor's non-responsiveness. Claimant also felt that she was being subjected to unfair treatment based on her on-the-job injury.

(6) The supervisor and Nancy repeatedly asked claimant if she was going to resign, in reference to claimant's email stating she was serious about resigning. They did not ask claimant what was wrong or offer assistance. Claimant felt that she was being disrespected, would be subjected to ongoing scrutiny in a way that would make her uncomfortable, and felt she was not going to be considered a valued employee anymore, and, during the meeting, quit work effective immediately.

**CONCLUSIONS 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 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). Claimant had a knee replacement, which may arguably be considered a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant quit work, in part, based on her allegation that, during the April 7, 2015 meeting, Nancy pointed a finger at her and said she would never get a promotion. However, Nancy and the supervisor both testified that the incident never occurred. Transcript at 23, 31. Therefore, the record fails to show that the incident occurred, and claimant did not show good cause for quitting work for that reason.

Claimant also quit work, in part, because the way in which Nancy treated her, and the employer's response to that, made her feel like she was not a valued employee, and would be subjected to ongoing scrutiny that would make it difficult to do her work. Claimant did not show good cause for leaving work due to the employer's response. When she felt Nancy had treated her inappropriately in 2015, claimant did not complain to human resources and asked her supervisor not to speak with Nancy about Nancy's behavior. Because claimant did not give the employer the opportunity to intervene with Nancy on claimant's behalf, the employer's failure to do so did not amount to a grave situation. Claimant argued,

in essence, that she feared Nancy would retaliate or her job would be in jeopardy if she complained about Nancy to human resources or if claimant's supervisor approached Nancy about her conduct. However, claimant did not assert or show that she had an objective reason to fear retaliation. Claimant did not show that complaining to human resources or allowing her supervisor to speak with Nancy about claimant's concerns would have been unreasonable. We therefore conclude that allowing human resources or her supervisor to intervene on claimant's behalf was a reasonable alternative to quitting work because of the way Nancy treated her.

Claimant also argued that she quit work because, based on her supervisor's and Nancy's indication that they planned to investigate her emails and instant messages going back to 2011, claimant felt she would be subjected to unfair scrutiny that would affect her ability to do her job. However, claimant admitted to the employer and at the hearing that at least a portion of the emails she had sent to coworkers were inappropriate and unprofessional. Transcript at 19, 29. Given that claimant admitted to having sent some unprofessional emails, it was not unreasonable for the employer to suspect she had sent others and notifies claimant that they planned to investigate her other email traffic to determine the extent to which claimant's use of the email system had violated the employer's policies about appropriate usage of the employer's email system. In addition, claimant did not establish that the investigation or its effect on her work was so unreasonable or overly invasive that the investigation would constitute a grave situation.

Finally, although claimant testified that she believed the employer's treatment of her was connected to her January 2015 on-the-job injury, she did not present evidence substantiating that belief. On this record, there is no evidence that the employer disputed her worker's compensation claim or attempted to deny that the injury had occurred, or took any negative action toward claimant based on her status as an injured worker. In the absence of evidence connecting the injury to what claimant perceived as unfair treatment, the record fails to show that the connection existed or that claimant had good cause to quit because of it.

The record as a whole failed to show that either Nancy's treatment of claimant, or her other working conditions, constituted grave situations, and failed to show that no reasonable and prudent person with a knee injury would continue working for the employer because of those working conditions. Claimant therefore did not establish good cause for quitting work, and she is disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 15-UI-39790 is affirmed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, *pro tempore*, not participating.

**DATE of Service:** August 11, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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