

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1240**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73335). Claimant filed a timely request for hearing. On September 16, 2015, ALJ Triana conducted a hearing, and on September 18, 2015 issued Hearing Decision 15-UI-44541, affirming the Department's decision. On October 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument but failed to certify that she provided a copy of the argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant's argument also presented information that was not a part of the hearing record and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from the offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Because claimant's argument did not comply with the applicable requirements, EAB did not consider it. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) McDonald's of La Grande employed claimant from December 14, 2014 until June 10, 2015, last as a shift manager.

(2) On Thursday, June 4, 2015, claimant was scheduled to work but had an appointment that would require her to leave work during her shift. Once at work, claimant discussed the appointment with an assistant manager and understood that the assistant manager was going to allow her to leave work for her appointment but intended to require her to use her work breaks to make up for the work time that she missed. Claimant was upset about losing her breaks. Claimant called the general manager to ask for permission to take time away from work for the appointment, and to ask some questions about work breaks. The general manager allowed claimant to take the entire day off from work, and told claimant that she needed to meet with him before reporting for her next work shift. The general manager asked claimant to meet with him at the workplace on Friday, June 5, 2015. Claimant stated that she was

unable to do so because she had “plans.” Audio at ~6:35. The general manager then asked claimant to meet with him on Saturday, June 6, 2015 at 3:00 p.m. Claimant agreed.

(3) On Saturday, June 6, 2015, claimant did not attend her meeting with the general manager. Claimant did not call or send a text message to the general manager to let him know that she would not attend the meeting.

(4) On Monday, June 8, 2015, claimant went to the workplace to pick up her pay check. On Tuesday, June 9, 2015, claimant sent a text message to the general manager asking if she could meet with him on that day. The general manager replied to claimant’s message stating that he busy and unable to meet with her that day, but would meet with her on Wednesday, June 10, 2015.

(5) After the text message of June 9, 2015, claimant did not communicate again with the general manager or the employer. Claimant did not show up to meet with the general manager on June 10, 2015 and did not communicate that she would not do so.

(6) By June 13, 2015, the general manager had concluded that claimant had abandoned her job. On that day, he called claimant and told her that she could pick up her last pay check.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The first issue this case presents is the nature of claimant’s work separation. If claimant could have continued to work for the employer for an additional period of time when the work ended, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

The employer contended at hearing that, without explanation, claimant did not show up for meetings with the general manager on June 6, 2015 and June 10, 2015, and ceased communicating entirely with the general manager and the employer after June 9, 2015. Audio at ~6:01, ~7:30. If claimant intentionally missed the meetings and failed to communicate with the general manager despite being instructed to meet with the general manager, we might agree that her conduct demonstrated that she was unwilling to continue working for the employer and conclude that the separation was a voluntary leaving. However, claimant contended that despite her desire to meet with the general manager and remain employed, unspecified exigencies and a non-functioning cell phone caused her to miss the June 6, 2015 meeting and thereafter make multiple failed attempts to maintain contact with the general manager or reschedule the meeting, but the general manager failed to respond to her attempts. Audio at ~18:36, ~21:04, ~25:39, ~26:08. If the general manager knowing did not respond to claimant’s communications – objectively manifesting claimant’s intention to continue the employment relationship – his failure to respond would evince an unwillingness to allow claimant to work, and the work separation would be a discharge.

In this case, the testimony of the general manager appeared logical, measured and careful, and based at least in part on the records he kept of his actual attempts to communicate with claimant and continue to employer her after claimant ceased responding to his attempts. Audio at ~31:01. Claimant’s testimony was less credible because it was vague, evasive and, in some respects, implausible. Claimant refused to

explain what exigency she claimed caused her miss the June 6, 2015 meeting, and when the ALJ asked if that exigency had made her miss the June 6<sup>th</sup> meeting claimant evaded answering the question by responding “yes and no,” even after the ALJ’s admonished her that her credibility was an issue. Audio at ~ 20:30, ~21:27, ~20:46. Claimant also failed to provide a credible answer as to why she stopped trying to communicate and did not respond to the general manager after June 9, 2015. Even if we believed that claimant did not receive the general manager’s message, it does not make sense that she would infer he was avoiding contact with her based on his single failure to reply and would thereafter limit her attempts to reach him to calling the workplace, particularly when, up to that time, she had regularly contacted him directly on his phone either calling him or by sending a text message. Audio at ~26:11, ~27:43, ~28:16.

Viewing the record as a whole, weighing the testimony of both parties and evaluating it against the parties’ past practices, the employer’s version of events was most believable, and, where facts were in dispute, we resolved them in favor of the employer’s evidence. We conclude it is most likely that claimant stopped all communications with the employer after June 9, 2015 and did not show up for the meeting with the general manager that was scheduled for June 10, 2015. Claimant’s failure to communicate with the employer evidenced her unwillingness to continue working for the employer. Claimant’s work separation was a voluntary leaving of work on June 10, 2015.

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). 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.

Because claimant maintained at hearing that she repeatedly tried to contact the general manager to set up the meeting that he required, she did not supply any reasons for leaving work. We are unable to discern any such reasons from the record. Claimant did not meet her burden to show grave reasons motivated her to leave work or that she had good cause to leave when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-44541 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

**DATE of Service:** November 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 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.