

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0898**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 102136). Claimant filed a timely request for hearing. On July 12, 2016, ALJ Frank conducted a hearing, and on July 20, 2016 issued Hearing Decision 16-UI-64121, affirming the Department's decision. On August 2, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Gelfand Insurance Group, Inc. employed claimant as customer service from October 15, 2014 until May 26, 2016.

(2) On one occasion before approximately February 2016 2016, claimant gave the employer a written notice that she was going to quit. At that time, claimant was upset because she thought her job was not a good fit for her. Claimant quickly withdrew that resignation and continued to work for the employer. Around approximately January or February 2016, claimant again mentioned to the employer's office manager that she might quit because her job did not suit her. However, claimant did not quit at that time.

(3) On May 25, 2016, the office manager announced to staff that one of claimant's coworkers was being promoted to the lead of the personal lines department. Claimant was upset about the promotion. Claimant expressed her displeasure to the office manager. Claimant raised her voice at the office manager as she objected to the promotion. Claimant stated repeatedly in a loud voice "this is not going to work." Audio at ~19:27. Claimant then abruptly left the workplace office and went outside. Sometime later, claimant came back to the office. The office manager approached claimant and told claimant that her behavior that day was not appropriate in an office environment. Claimant was still upset, and still objecting to the worker's promotion in a raised voice. The office manager tried to calm claimant, but she could not. Finally, the office manager told claimant she needed to go home for the day. Claimant left the workplace.

(4) On May 25, 2016, after claimant left for home, the office manager locked claimant out of the employer's computer network. In light of claimant's history of expressing intentions to quit work, her upset that day and her emotional behavior when she left the office, the office manager thought it was appropriate to bar claimant from the network in the event she decided to resign because she would otherwise be able to access the employer's network from her home computer.

(5) On May 26, 2016, claimant reported for work at around 8:00 a.m. Claimant discovered she was locked out of the employer's computer network. At approximately that same time, the office manager entered claimant's office and told claimant she needed to be more respectful in the office and that she would arrange for the restoration of claimant's ability to access the computer network. In response, claimant stated repeatedly that she had been discharged, presumably when she was locked out of the computer network. The office manager repeatedly told claimant she had not been discharged. Claimant then left the workplace and did not return.

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

Claimant contended she did not voluntarily leave work and the employer office manager contended she did. Audio at ~14:45, ~23:43. The first issue this case that must be determined is the nature of claimant's work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The testimony of the parties about the work separation starkly diverged. Although claimant admitted she was a "little upset" on May 25, 2016 and she raised her voice "a little higher" than usual when she spoke to the office manager, she denied her upset was due to the promotion of the coworker and asserted it was due to "disappointment" over not being able to have a meeting with the human resources representative. Audio at ~7:50, ~8:07, ~8:35, ~9:30. Claimant never clarified why she would have had what she characterized as a "disagreement" with the office manager about not meeting with a human resources representative, and it is difficult to see a connection between the two. It makes more sense that the disagreement between claimant and the office manager was about the promotion of claimant's coworker to the position of lead. As well, when claimant described the meeting with the office manager that caused her to gather up her belongings on May 26, 2016 and leave the workplace, she did not contend that the office manager told her she was discharged, fired or terminated, but only that the office manager commented for some unknown reason that "it's a mutual agreement," without offering an antecedent to the "it" or an explanation of the conversational exchange that preceded the office manager's comment to give it context. Audio at ~29:50. Assuming the office manager made the comment that claimant alleged, that comment is susceptible of any number of interpretations, including that it was merely a rejoinder to a statement from claimant that she was going to leave work. In contrast to claimant's testimony, the office manager's account of her interactions with claimant on both May 25 and 26, 2016 was clear, detailed, comprehensive and made logical sense. Given that so many aspects of claimant's testimony were disconnected, it appeared significantly less reliable than the office manager's testimony. We have accepted the office manager's testimony as accurate. Based on that testimony, that claimant chose to leave work despite repeatedly being told that she was not discharged and that her

access to the employer's computer network was to be restored, continuing work was available to claimant and her work separation was a voluntary leaving on May 26, 2016.

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 his employer for an additional period of time.

Claimant did not offer any circumstances that reasonably caused her to conclude that her circumstances were so grave that she had no reasonable alternative but to leave work on May 26, 2016. To any extent claimant quit because she thought the employer meant to discharge her by locking her out of the computer network, the office manager told claimant immediately before she quit on May 26, 2016 that she was going to restore her computer network privileges, thereby removing any ambiguity as to the meaning of the computer lock out, and told her she was not discharged. Because claimant’s decision to leave work was not necessitated by grave reasons, claimant did not show good cause for leaving work when she did.

Claimant did not show, more likely than not, that she had good cause for leaving work. Claimant is disqualified from receiving unemployment benefits.

**DECISION:** Hearing Decision 16-UI-64121 is affirmed.

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

**DATE of Service:** September 6, 2016

**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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