

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1008**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122039). Claimant filed a timely request for hearing. On August 17, 2016, ALJ S. Lee conducted a hearing, and on August 24, 2016 issued Hearing Decision 16-UI-66269, affirming the Department's decision. On August 31, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information not presented during the hearing. However, claimant did not show that he was prevented from offering the new information in his argument during the hearing by factors or circumstances beyond his reasonable control as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider that new information. EAB considered only information offered and admitted into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Mary Jane's House of Glass XI, LLC employed claimant as a sales associate in its store in northeast Portland, Oregon from June 30, 2015 until May 23, 2016.

(2) In November 2015, a coworker and claimant had an interaction in the workplace that claimant perceived as very hostile. Claimant filed a complaint with his manager about the coworker's hostile behavior. As a result of claimant's complaint, the employer began preparing schedules that did not require claimant and the coworker to work together.

(3) In March 2016, the employer, without notifying claimant, scheduled claimant and the coworker to work together. During their overlapping shift, the coworker and claimant again had an interaction that claimant perceived as very hostile. Claimant again filed a complaint against the coworker for her hostility. Since claimant's first complaint had not led to a resolution of claimant and the coworker's

difficulties in working together, claimant wanted the employer's human resources department involved in the second attempt at resolution, as allowed under the employer's in-house complaint resolution procedure. Exhibit 1 at 8. Claimant later spoke with his manager and an April 18, 2016 meeting was scheduled between claimant and one or more representatives of the employer's human resources department to address claimant's second complaint against the coworker. On April 17, 2016, that meeting was cancelled and claimant was not notified that the meeting was rescheduled.

(4) On April 27 or 28, 2016, the employer's junior district sales manager came to the workplace and spoke to claimant about his second complaint against the coworker. The junior district sales manager told claimant that it was creating staffing difficulties for the employer to schedule claimant and the coworker for shifts that did not overlap. She stated that the employer needed to find a "different approach" to resolve the issue between the coworker and claimant. Audio at ~38:30. She asked claimant to "put forth effort" to resolve the problem between the coworker and himself rather than relying only on being scheduled apart from the coworker. Audio at ~19:04. Although claimant agreed to try, he did not know how to treat the coworker in such a way that future conflicts would be avoided. Claimant also thought that it was inappropriate for the junior district sales manager to "place the burden" on him to resolve the issues with his coworker, and that his manager and the employer's human resources department should be responsible for resolving those issues. The junior district sales manager also told claimant that if he and his coworker were unable to get along and work together both of them would be transferred to different stores or, if one of them tried and the other did not, only the one who had not tried would be transferred.

(5) After he had the discussion with the junior district sales manager, on April 28 or 29, 2016, claimant spoke with the employer's district manager. Claimant told the district manager that he wanted to meet with a human resources representative, and that he was going to file a complaint against the junior district sales manager for what he perceived as her aggressive behavior when she spoke with him about resolving the issues with the coworker. Claimant also told the district manager that he did not know how to treat the coworker to avoid further conflict and that he should not be responsible for resolving the issues between himself and the coworker. Claimant further told the district manager that he would quit if he was again scheduled to work with the coworker. Sometime after he spoke with the district sales manager, claimant faxed a complaint against the junior district sales manager directly to the employer's human resources department.

(6) On May 12, 2016, claimant met with the human resources director, the district manager and his direct manager. At the meeting, the human resources representative gave claimant a disciplinary warning. The warning stated that the employer would no longer schedule claimant to work at different times than the coworker was scheduled and that claimant should make an effort to resolve his "personality conflict" with the coworker. Exhibit 1 at 3. The warning further stated that if claimant did not want to try to resolve that conflict, he could request a transfer to another store or quit. *Id.* Since the warning was issued when claimant had a complaint pending against the junior district sales manager, claimant thought the employer was retaliating against him.

(7) On May 23, 2016, claimant saw that he was not scheduled to work at the employer's northeast Portland store in the upcoming week. Claimant contacted the district manager and was told he had been transferred to the employer's store in northwest Portland. Claimant thought the employer was again retaliating against him for the complaint he had filed against the junior district sales manager. Claimant

did not want to work at the northwest Portland store because he lived in northeast Portland, he had only one car that his wife used to travel to her work, it would take him multiple bus transfers to reach the northwest Portland store and the northeast Portland store “was the best place for [him] to work.” Audio at ~33:28.

(8) On May 23, 2016, after he learned that he had been transferred to the northwest Portland store, claimant sent a text message to the employer’s human resources representative asking her for the reason he had been transferred and if she had reviewed the complaint he had sent to the human resources department about the junior district sales manager. The representative responded that she had not had time to read the complaint and asked claimant to wait until she had the time to do so.

(9) On May 23, 2016, claimant voluntarily left work because he thought the employer was retaliating against him.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

Claimant quit his job because he believed the employer was retaliating against him for his efforts to get the employer to resolve a conflict between him and a coworker. Claimant felt the employer had the responsibility to resolve the issues between himself and the coworker, and that the junior district manager and the employer were retaliating against him when they asked him to try to participate in the resolution of those issues by meeting with the coworker himself. It does appear unreasonable for the employer to ask claimant to “put forth effort” to try to resolve with the coworker whatever had led to the conflict between them. Nor does it appear necessarily retaliatory for the employer to issue a warning to claimant for not making this effort or refusing to do so. While claimant might have found it distasteful to interact further with the coworker in an attempt to resolve the problem with the coworker, it does not appear that merely trying to resolve the issue through a personal interaction with the coworker would have subjected claimant to a grave situation. At worst, if the effort failed, claimant could have reported the failure to the employer and learned what additional steps, if any, the employer intended to take.

To the extent claimant thought “putting forth the effort” to resolve the issues with the coworker constituted a grave situation or that the request of the junior sales manager that he do so was an act of retaliation against him, claimant did not need to quit work when he did. Claimant had the option of working at the northwest Portland store while the human resources representative reviewed his complaint against the junior district sales manager and determined whether her actions were retaliatory. While claimant pointed out that it was not convenient for him to commute to the northwest Portland store, he testified he had done so when he was in training and he did not show that the circumstances of

this commute had changed significantly since he was in training. While claimant contended the representative's response to his text message of May 23, 2016, in which she indicated she had not yet reviewed his complaint and asked him to wait, demonstrated that she also was retaliating against him, there is insufficient evidence in the record to show that this was so. That the representative had delivered the May 12, 2016 disciplinary warning to claimant was not sufficient to establish that the representative also was a participant in any alleged retaliation against claimant since there was no evidence that she knew claimant's side when she delivered the warning or that she was consulted by and agreed with the junior sales manager about the advisability of issuing the warning under the circumstances. Claimant also did not establish that it was reasonably futile for him to pursue redress through the human resources representative in lieu of quitting and, during that time, to maintain his employment by working at the northwest Portland store.

On this record, claimant did not show that he faced a grave situation or, if he did, that he had no reasonable alternatives other than to leave work when he did. Claimant did demonstrate he had good cause for leaving work. Accordingly, claimant is disqualified from receiving unemployment benefits.

**DECISION:** Hearing Decision 16-UI-66269 is affirmed.

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

**DATE of Service:** October 12, 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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