

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1226**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93548). Claimant filed a timely request for hearing. On October 26, 2016, ALJ Buckley conducted a hearing at which the employer did not appear, and on October 27, 2016 issued Hearing Decision 16-UI-70011, affirming the Department's decision. On November 2, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) USCC Payroll Corporation employed claimant as a retail wireless consultant from November 21, 2014 until August 16, 2016.

(2) By 2016, claimant had concluded that her lead worker was participating with male coworkers in sexually harassing behaviors and allowing such behaviors to occur in the workplace. The lead worker, who was male, would often openly exchange sexually charged comments about female coworkers and female customers with male coworkers. The lead worker and some of the coworkers would also inappropriately touch female coworkers and female customers in a sexual manner. After the lead coworker and some coworkers engaged in rude and harassing behaviors toward other coworkers, they would often announce to the person to whom their behavior was directed, "I've punked you." Audio at ~15:00, ~33:58. Claimant had sexually suggestive comments directed to her, overheard suggestive comments being made to and about herself and others, and often had to resist being inappropriately touched in a sexual manner in the workplace.

(3) In February 2016, claimant spoke with the sales manager about the sexually suggestive behaviors that were occurring in the workplace. Exhibit 1 at 3. Another female coworker also spoke with the sales manager about sexually suggestive behaviors. The behaviors did not stop. In March 2016, claimant spoke with the store manager about the behaviors and they did not stop. *Id.* On June 9, 2016,

claimant spoke with the area manager about the ongoing sexually suggestive behaviors. *Id.* The behaviors did not stop. In the middle of June 2016, claimant spoke with the sales manager about the behaviors. *Id.* The behaviors did not stop. At around this same time, a female coworker of claimant's also spoke to the sales manager about the sexually harassing behaviors of the lead and some of male coworkers when management was not present in the store and "they [the lead and the male coworkers] kind of took over [the store]." Audio at ~36:50. The coworker thought her complaint fell on "deaf ears." Audio at ~36:02. The behaviors did not stop. Claimant had become increasingly unsettled and miserable as a result of the ongoing behavior in the workplace. On July 14, 2016, claimant filed a report with the employer's human resources department about the sexually suggestive behaviors that were continuing in the workplace. Claimant identified the lead worker as principal participant in the behavior. Exhibit 1 at 10. On July 26, 2016, the human resources department issued a report stating that its investigation had "found that unwanted physical advances, suggestive comments and physical gestures had occurred." *Id.*

(4) Around July 26, 2016, claimant spoke with the human resources representative who had issued the report of the investigation. The representative told claimant that the employer was going to take "appropriate action" in light of the results of the investigation, but did not specify what those actions would be. Audio at ~12:25. On July 27, 2016, the lead worker ignored claimant and left claimant alone on the sales floor to handle all of the customers. The lead also put on ear phones and refused to respond when claimant asked him for assistance. Claimant concluded he was retaliating against her for filing the human resources complaint. That same day, claimant spoke with the store manager about the lead's behavior and what action was going to be taken to deal with it and with the human resources complaint. The store manager told claimant, "I don't know how to fix it [the lead's behavior]." Audio at ~25:43. He told claimant that he understood the employer was going to hold additional trainings and management was going to be in the store more often to monitor the behavior of the lead and the male coworkers. Audio at ~17:20.

(5) After July 27, 2016, the lead's behavior that claimant considered offensive, sexually suggestive and sexually harassing continued. The lead also continued to ignore claimant and leave her to work alone on the sales floor. Management did not increase its visits to the employer's store. Claimant continued to work despite the employer's lack of action in response to her human resources complaint and the lead's hostile behavior.

(6) On Sunday, August 14, 2016, claimant experienced an anxiety attack when she thought about what was going to happen at work on Monday. Claimant's arms "tingled" and she could not breathe due to the anxiety attack. Audio at ~20:46. Claimant went to the emergency department at a local hospital. At the hospital, claimant's blood pressure was measured at "stroke level." Audio at ~7:41. Claimant's physical symptoms finally ameliorated, she was advised not to report for work on August 15, 2016, and she was released from the hospital.

(7) On Tuesday, August 16, 2016, claimant again had an anxiety attack when she was preparing to report for work. Claimant felt "super-overwhelmed." Audio at ~21:48. When claimant reached the workplace she went to the office of the sales manager. Claimant gave the sales manager a medical excuse for her absence on August 15, 2016 and discussed with him the anxiety that reporting for work had induced. Claimant intended to discuss with him options under which she could avoid the lead's behavior. The sales manager asked claimant if she wanted to be re-hired by the employer after she left

work. Audio at ~23:16. Claimant told the sales manager that she did not. Claimant voluntarily left work on August 26, 2016.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work with 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 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

In Hearing Decision 16-UI-70011, the ALJ concluded claimant did not show good cause for leaving work when she did. Although the ALJ found that claimant “faced an arguably grave situation” from the behavior of the lead and some of the male coworkers, the ALJ reasoned that claimant had the reasonable alternative of “reporting her concerns of retaliation to [the] employer and determining whether they would be addressed” before she quit work. Hearing Decision 16-UI-70011. We disagree.

The employer did not appear at the hearing and claimant’s testimony about the lead’s behavior and the behavior of some of her male coworkers was un rebutted, as was her description of the sexually suggestive atmosphere that pervaded the workplace and the failure of the members of the employer’s management to take action to correct that atmosphere after they were notified of it. Based on claimant’s testimony and the panic attacks she experienced on August 14 and August 16, 2016 when she contemplated reporting to work, it can only be concluded that she faced a grave situation when she decided to leave work. While it was theoretically possible that making another complaint to human resources about the sexually suggestive and retaliatory behavior that was ongoing after claimant filed the initial complaint might have yielded the corrective result she sought, there is no evidence in the record that it was likely to do so. Over two weeks had elapsed since the conclusion of the human resources investigation, and in that time claimant did not observe an increased management presence in the workplace to deter the ongoing offensive behavior and the store manager had told her that he did not know how to remedy the retaliatory behavior of the lead. Also during that two week period, claimant was not aware of any actions undertaken by the human resources department to ameliorate the ongoing behavior of the lead. Given that ample time had passed since the human resources department had substantiated claimant’s allegations, and that neither the department nor any members of the employer’s management had acted to protect claimant from further offensive and retaliatory actions, it was not unreasonable for claimant to conclude that they would not promptly take effective action on her behalf, if they ever would. A reasonable and prudent person in claimant’s circumstances would not have continued working in the workplace claimant described while being subjected to sexually suggestive and retaliatory behavior for an indefinite period of time. Claimant demonstrated grave reasons caused her to leave work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-70011 is set aside, as outlined above.

Susan Rossiter and D. P. Hettle;

J. S. Cromwell, not participating.

**DATE of Service: November 22, 2016**

**NOTE:** This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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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