

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0414**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 114509). The employer filed a timely request for hearing. On March 21, 2017, ALJ Lewis conducted a hearing, and on March 23, 2017 issued Hearing Decision 17-UI-79501, concluding that claimant quit working for the employer without good cause. On April 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Texas Roadhouse Management Corp. employed claimant as a server from December 10, 2015 to December 4, 2016.

(2) Claimant suffered from a social anxiety disorder, for which she was treated with prescription antidepressants and anxiety medications.

(3) The employer scheduled claimant to work on December 1, 4 and 7, 2016. On November 30, claimant used the employer's online work scheduling system to release her December 1 shift, hoping that another employee would pick up the shift. Another employee picked up the shift, but claimant's manager needed the other employee to pick up a sick employee's shift, and therefore required claimant to work on December 1.

(4) Approximately 15 minutes before claimant's December 1 shift started, she notified her manager that she was not coming to work that day. Claimant's manager told her that if she missed work there would be consequences and that she did not know if claimant would have a job. Claimant confirmed that she was not coming in to work, and claimant's manager instructed her come in 30 minutes to 1 hour before her shift started on December 1 to discuss the matter.

(5) Claimant did not report for work as scheduled on December 1. On December 2, claimant's managers agreed to discipline claimant by temporarily reducing her hours and requiring her to work in less desirable sections of the employer's restaurant. Between December 2 and 4, they removed claimant

from the work December 4 and 7 work schedules. On December 4, they omitted claimant from the following week's schedule. Claimant mistakenly determined that she had been discharged, and therefore did not meet with her manager on December 4, or contact the employer again to clarify her employment status. The employer eventually determined that claimant had abandoned her job, and in mid to late December denied claimant access to its online work schedules.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant quit working for the employer without good cause.

We first address that nature of claimant's work separation from the employer. 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At hearing, claimant argued that she was discharged, asserting that she was willing to continue working for the employer for an additional period of time, but the employer did not allow her to do, as evidenced by the fact that it removed her from the December 4 and 7 work schedules, and omitted her from the following week's schedule. Transcript at 39. However, claimant admitted that the manager did not tell her on December 1 that she would be discharged if she missed work that day, and instead instructed her to come in to discuss the matter. Transcript at 29-31. The employer's witness credibly testified that the managers agreed to discipline claimant by temporarily reducing her hours and requiring her to work in less desirable sections of the employer's restaurant. Transcript at 17. Thus, although the record shows claimant was willing to continue working for the employer for an additional period of time, it fails to show the employer prevented her from doing so. The record instead shows that claimant could have continued to work for the employer for an additional period of time by meeting with the manager on December 4 or contacting the employer to clarify her employment status. The work separation therefore is a quit, and not a discharge.

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). Claimant suffered from a social anxiety disorder, 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 on December 4, 2016 because she mistakenly concluded that she had been discharged for missing work after the employer removed her from the current work schedule and omitted her from the following week's schedule. As of December 4, however, claimant had not been

told she would be discharged for missing work, had been instructed to come in to work to discuss the matter, and could still access the employer's online work schedules. Rather than abandon her job, claimant had the reasonable alternative of meeting her manager on December 4 or otherwise contacting the employer to determine the reason for her removal and omission from the work schedules, including whether she had been discharged for missing work, or subjected to a lesser form of discipline such as a suspension or reduction in hours. And although claimant attributed her failure to speak with manager to her social anxiety disorder, she admitted her condition was not so severe that it prevented her from doing so. Transcript at 32. Claimant therefore failed to show that no reasonable and prudent person with her social anxiety disorder would have met with her manager or otherwise contacted the employer to clarify her employment status. Absent such a showing, claimant failed to establish good cause for quitting work.

**DECISION:** Hearing Decision 17-UI-79501 is affirmed.

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

**DATE of Service:** May 4, 2017

**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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