

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0427**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 74949). Claimant filed a timely request for hearing. On March 23 and 28, 2017, ALJ Seideman conducted a hearing, and on April 5, 2017, issued Hearing Decision 17-UI-80282, affirming the administrative decision. On April 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on evidence in the record.

**FINDINGS OF FACT:** (1) QK Holdings employed claimant as a manager at a Denny's restaurant from August 21 until December 16, 2016.

(2) On November 13, 2016, claimant discovered that two employees, one of whom was designated as the shift leader, had left the Video Lottery machines unlocked from 9:30 a.m. until 5:30 p.m. Claimant considered the employees' failure to properly safeguard the lottery machines to be an extremely serious error, because it had left the machines vulnerable to theft. Claimant intended to give each of the employees a written reprimand entitled "Employee Performance Record." The general manager told claimant that this type of discipline was too severe, and directed claimant to give each of the employees a "Memo for Record," a document which the employer considered to be a lesser form of discipline. Exhibits 2 and 3.

(3) During November and early December 2016, claimant experienced numerous problems with one of the servers she supervised. Claimant gave this server the following "Employee Performance Records" for the following offenses: on November 3, 2016, for failing to obey a directive to scrape and stack dishes for the dishwasher (Exhibit 5); on November 4, 2016, for failing to report for a scheduled shift and failing to inform the employer in advance that she would be absent, (Exhibit 4); on November 24, 2016, for displaying "a very unpleasant disposition on your shift" (Exhibit 7); and on December 7, 2016,

for engaging in behavior so rude and discourteous that it created a “hostile work environment.” (Exhibit 6). Not all of these “Employee Performance Records” were discussed with or signed by the server. Claimant believed the employer’s general manager did not adequately support her discipline of this server. Claimant also called the employer’s human resources manager a number of times; although she left messages for this manager, he never returned her calls. Claimant did not ask the employer’s district manager for help with the problem employee; because claimant believed she had overheard the district manager laughing about a customer complaint, she concluded he would be unable to provide her with any meaningful assistance. Transcript at 18.

(4) On December 8, 2016, claimant notified the employer that she was ill and going to the hospital. Claimant was hospitalized for several days. At some time during or after her hospitalization, she was told that the general manager had informed other individuals that claimant was using drugs.

(5) On December 15, 2016, claimant notified the employer that she was not yet released to return to work. On December 16, 2016, claimant called the restaurant she managed, spoke to a server, and asked that the server tell the general manager that she (claimant) would not be returning to work. Claimant quit her job because she believed that the general manager had spread false rumors that claimant was using drugs, and because she believed the general manager did not provide her with adequate assistance in her efforts to discipline employees.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that 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.

At the hearing, claimant insisted that she did not quit her job because she believed that the general manager had falsely spread rumors that claimant was using drugs; instead, claimant asserted she quit her job because of the general manager’s failure to assist and support her in disciplining employees. Claimant testified, however, that the “final straw” that resulted in her decision to quit were the reports she received about the general manager’s alleged statements that claimant was “on drugs.” Transcript 11-12. Based on this record, we conclude that claimant’s belief that the general manager was telling others that claimant used drugs was among the reasons why claimant decided to quit her job.

To the extent that claimant quit her job because of her belief that the general manager was falsely accusing claimant of drug use, claimant failed to demonstrate that she faced a grave situation. Claimant provided hearsay evidence regarding two individuals – Mr. Brooks and Mr. Hollister – with whom the general manager allegedly discussed claimant’s drug use. Transcript at 23-24. In addition, a former coworker of claimant’s testified that when she was eating at the restaurant where claimant worked, and

asked the general manager about claimant, the general manager told her that claimant “no longer worked there that she had been on drugs.” Transcript at 23. The general manager, however, denied that she had ever told anyone that claimant used drugs. Transcript at 46. The first hand evidence of the general manager is entitled to greater weight than claimant’s hearsay evidence about conversations with Mr. Brooks and Mr. Hollister. Because the evidence regarding the general manager’s statements to claimant’s former coworker is evenly balanced, claimant failed to meet her burden to demonstrate that such a conversation occurred. Claimant therefore did not demonstrate by a preponderance of evidence that the general manager created a grave situation for her by circulating false rumors about claimant’s drug use.

To the extent that claimant quit her job because she believed the general manager did not support her efforts to discipline employees, and in particular, her efforts to discipline a problem server, claimant failed to demonstrate good cause for voluntarily leaving work. Assuming without deciding that the server’s behavior created a grave situation for claimant, claimant failed to show that discussing the situation further with the general manager would have been futile and was therefore not a reasonable alternative. Claimant asserted that when she discussed the issue of the problem server with the general manager, the general manager “had the [server] working all my shifts,” rather than attempting to resolve the situation. Transcript at 6. The general manager, however, testified that she talked to both claimant and the server about the schedule, apparently obtained claimant’s assent to it, and warned the server that her hours would be reduced if claimant was “not comfortable” working with the server. Transcript at 45-46. Because the evidence regarding the general manager’s willingness to help claimant is evenly balanced, claimant failed to meet her burden to show that attempts to obtain the general manager’s assistance would have been futile.<sup>1</sup> A reasonable and prudent person, who concluded that a subordinate employee’s behavior had created a hostile work environment, would have sought further help from her supervisor in attempting to resolve the situation before concluding she had no reasonable alternative but to quit her job.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 17-UI-80282 is affirmed.

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

**DATE of Service:** April 27, 2017

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<sup>1</sup> Nor do we find the general manager’s decision to reduce the level of discipline imposed on the employees who left the video lottery machine unattended constituted an attempt to undermine claimant’s authority as a manager. Transcript at 8-9. While claimant may have disagreed with the general manager’s actions, the general manager had a reasonable basis for her decision – she agreed that the two individuals needed to be disciplined, but that it was appropriate to reduce the level of discipline imposed, because the individuals were long time employees, with “perfect attendance” and “perfect performance.” Transcript at 48. A reasonable and prudent person, exercising ordinary common sense, would accept a supervisor’s relatively minor decision to reduce the level of discipline imposed on employees and not conclude that such an action threatened her authority as a manager.

**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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