

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1425**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103503). Claimant filed a timely request for hearing. On November 29, 2017, ALJ Scott conducted a hearing, and on November 30, 2017 issued Hearing Decision 17-UI-97925, affirming the Department's decision. On December 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Klamath Falls Honda/Subaru employed claimant from April 2016 until approximately October 3, 2017, last as an administrative assistant in the body shop office of a car dealership.

(2) In October 2016, claimant was assigned to work in the body shop office. Sometime after, claimant was asked to do some work in the body shop itself and also to begin learning the process of preparing estimates for body shop repairs. Claimant did not want to work in the body shop with the technicians as opposed to working in the body shop office. Claimant was "not comfortable" working in the body shop and was concerned about being "bullied into doing the job out there [in the body shop]." Transcript at 9. Claimant also was concerned that a set schedule would not be implemented showing when she would work in the body shop and when she would work in the body shop office.

(3) On approximately September 28, 2017, claimant left the body shop office to answer a personal call on her cell phone. Claimant's supervisor, the body shop manager, had previously told her to step away from the office if she needed to take a personal call. Later that day, the manager spoke with her about using her cell phone for personal matters while at work. The manager told claimant that she was going to "fall behind" in her work if she continued taking personal calls while at work. Transcript at 37. Claimant thought that she had only spent a short period of time on the personal call she had taken that day. Claimant "disagreed" with the manager's comment and responded that she was "sick of this shit." Transcript at 10, 37. The manager told claimant to go home for the day. Claimant went home.

(4) The next day, on September 29, 2017, the body shop manager and the fixed operations director met with claimant and gave her a written warning for her personal cell phone use the day before and her “terrible attitude” when confronted about it by the manager. Transcript at 29. Claimant refused to sign the warning when asked to do so by the operations director. The discussion between claimant and the manager and the director intensified. The operations director told claimant to go home for the day. After claimant left that day, the body shop manager arranged for other employees to handle work that claimant would otherwise have been responsible for that day. To allow them to perform claimant’s work, those employees removed some paperwork from the top of claimant’s desk.

(5) On approximately October 3, 2017, claimant’s next scheduled work day, claimant sent a text message to the body shop manager inquiring whether she should come to work that day. The manager replied that claimant should report for work, but that she needed to speak with the operations director before beginning work. Shortly thereafter, claimant arrived at the workplace. After she arrived, claimant noticed that all paperwork had been removed from her desktop, and became concerned that she was going to be discharged. However, some personal belongings of claimant remained in her work area, including a plant, a picture frame and a computer keyboard that claimant had brought to the workplace.

(6) After claimant’s workplace arrival on October 3, 2017, the body shop manager and the operations director met with claimant and began a discussing claimant’s attitude and changing claimant’s work duties. The operations director told claimant she needed to begin learning how to prepare estimates for auto body repairs, which claimant interpreted as meaning she was going to work exclusively in the body shop. Claimant thought it this reassignment was not “fair.” Transcript at 7. Claimant did not want to work in the body shop and told the manager and the director that she would not do so unless she received a raise. The supervisors told claimant she was not going to receive additional compensation for preparing estimates. Claimant told the body shop manager and the operations director that she wanted to speak with the employer’s general manager about her work assignment. At that time, the general manager was attending a regularly scheduled meeting. The operations director told claimant she could speak with the general manager if she wished, but that she needed to begin working. At that point, claimant gathered the personal belongings from her work area and left the workplace. Thereafter, claimant did not return to the workplace.

(7) On approximately October 3, 2017, claimant voluntarily left work.

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

Claimant contended the employer discharged her on October 3, 2017 when the operations director told her she was “fired.” Transcript at 6, 9. In contrast, the body shop manager and the operations director denied that either of them told claimant she was fired and that claimant voluntarily left work when she abruptly left the workplace on October 3, 2017 and did not return. Transcript at 20, 21, 30, 31, 32. Consequently, the first issue this case presents is the nature of the 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).

As it pertains to the work separation, the testimony of claimant and the employer's witnesses is irreconcilable, and there were no disinterested witnesses to the conversation on October 3, 2017. However, the testimony of the body shop manager and the operations director was consistent with that of the other, internally consistent, and made logical sense when viewed in the context of claimant having voluntarily left work. Claimant's testimony was less persuasive than that of the employer's witnesses. First, it does not make sense that the body shop manager would tell claimant to come in to work on October 3, 2017 when, as claimant contended, the employer had already decided to let her go as supposedly exemplified by allegedly cleaning off her desk. Second, claimant did not challenge the employer's testimony that it took the paperwork from the top of claimant's desk merely to enable other employees to perform her when she was sent home on September 28 and 29, 2017 and not to clean the desktop in anticipation of discharging her, and she did not dispute that the employer did not move any of her personal belonging out of her work space. Transcript at 6, 23, 31, 41. Third, while claimant vaguely alluded to the body shop manager having spoken to her on September 28, 2017 about taking personal cell phone calls during work time, she did not dispute that the employer presented a written warning to her for doing so on September 29, 2017 and that she refused to sign that warning. Transcript at 9. Were claimant being forthright and complete in her testimony, she would have been expected at least to mention an event as memorable as refusing to sign a warning so shortly before the work separation. Finally, although claimant denied refusing to work in the body shop on October 3, 2017 unless she was given a raise and seemed to state at points in her testimony that she was willing to be assigned to the body shop, her testimony about working in the body shop implicitly contradicted that testimony when it emphasized at length how distasteful she considered that work and how unfair it was for the employer to assign her to perform it on October 3, 2017. Transcript at 6-9, 36. Viewed in sum, claimant's testimony appeared less reliable than the testimony of the employer's witnesses and to have less explanatory power. For this reason, we have accepted the employer's account of what transpired on October 3, 2017 and what led to the work separation. Claimant's work separation therefore was a voluntary leaving on October 3, 2017.

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 her employer for an additional period of time.

Because she contended that she was discharged, claimant did not offer any reasons for leaving work. From the record, it can be discerned that at the time of the work separation, claimant was likely displeased with the warning she was issued on September 29, 2017 and with prospect of working in the body shop. Claimant also may have left work because she thought the employer intended to discharge her based on having removed from her desktop sometime before October 3, 2017. With respect to the warning, although claimant may have disagreed that it was merited under the circumstances, she did not show that the employer intended to impose any sanctions as a result of it or that a reasonable and prudent person would have considered its issuance a grave matter. With respect to working in the shop, claimant did not show that the employer intended to have her do more than prepare written estimates for

auto body repairs, or that a reasonable and prudent person would have considered working in the shop to constitute a situation of gravity. With respect to thinking that she was going to be discharged, claimant had the reasonable alternative of asking the body shop manager, the operations director or the general manager what the employer's intentions were, and if it intended to discharge her, before deciding to leave work. On these facts, claimant did not meet her burden to show good cause for leaving work when she did.

Claimant did not show good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-97925 is affirmed.

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

**DATE of Service: January 18, 2018**

**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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