

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0597**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135216). Claimant filed a timely request for hearing. On June 5, 2018, ALJ Schmidt conducted a hearing, and on June 6, 2018 issued Order No. 18-UI-110793, affirming the Department's decision. On June 11, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Umpqua Bank employed claimant from September 22, 2015 until March 15, 2018, last as a universal associate.

(2) Some months before her employment ended, claimant had a falling out with a coworker who was also a personal friend. The falling out occurred after the location of claimant's teller station was changed and claimant was no longer able to see customers as they approached her for assistance. The coworker pointed out that claimant was not waiting on customers and asked for claimant's help. Claimant thought the coworker was accusing her of ignoring customers when she actually was not aware of them. Both claimant and the coworker became upset and "very vocal." Audio at ~18:00. Claimant and the coworker exchanged "foul words." Audio at ~18:50. After this interaction, claimant and the coworker no longer had a cordial working relationship. Claimant began to perceive many of the coworker's actions as being offensive, exhibiting "disrespect" toward her and "humiliating" her. Audio at ~30:53. On several occasions, claimant complained to the branch manager about how that coworker and another coworker were treating her. On several occasions, the branch manager spoke to claimant and her coworkers about interactions that claimant considered offensive.

(3) Beginning some months before claimant's employment ended, the coworker who had once been claimant's personal friend occasionally made comments to claimant, sometimes in front of customers, that jokingly suggested claimant lacked intelligence. Audio at ~30:53. Those comments embarrassed claimant.

(4) On one occasion in the winter, claimant was conversing with a customer in the bank and mentioned that she had failed to properly warm up her car before driving to work and had needed to pull off the road to clear frost and ice from the windshield. The coworker overheard claimant's conversation with the customer and sent claimant an instant message stating, "What a DA." Claimant understood DA to mean "dumb ass" and was offended. Audio at ~51:28. Claimant complained to the branch manager. The branch manager spoke to claimant's coworker and told the coworker to stop sending offensive messages. This incident was the only time that claimant complained to the branch manager that any coworkers were calling her offensive names.

(5) On January 9, 2018, claimant sent an instant message to the branch manager stating that a different coworker had been "rude" and "short" with her and was "giving her nasty looks." Audio at ~16:27. At around this time, claimant began working with the branch manager and a human resources representative to improve her relationships with coworkers. Claimant had begun to feel that her poor working relationship with coworkers, particularly two coworkers, was negatively impacting her work performance. Claimant felt uncomfortable asking those coworkers for help and, as a result, would need to call the employer's operations reference desk for information about "really stupid things." Audio at ~40:10. When claimant made mistakes at work, she often felt "humiliated" and "embarrassed" by her perception of the coworkers' reactions to them. Audio at ~40:25. Claimant felt stress about making mistakes as well as about the reaction she anticipated receiving from her coworkers over those mistakes. Claimant would cry when she thought about work.

(6) Sometime after January 9, 2018, in an attempt to rehabilitate working relationships in the branch, the branch manager had employees engage in team building activities. On February 13, 2018, claimant met with the branch manager for a regularly scheduled coaching. Claimant told the branch manager that her relationships with coworkers were "going better" after the team building exercises, and her communication with them had improved. Around that time, claimant spoke to one of the coworkers about interactions she had with that coworker that she had considered offensive, and claimant thought positive progress was made by having that conversation. Audio at ~33:22.

(7) Sometime around approximately Tuesday or Wednesday, February 20 or 21, 2018, a coworker asked claimant to scan paperwork for closed accounts into the employer's system and to shred that paperwork. Later, claimant thought that the coworker "slammed down" on her work station a folder containing paperwork for a closed IRA "in a rude way." Audio at ~ 35:48. Claimant had never before dealt with a closed IRA. Claimant took the papers out of the folder and prepared to shred them. The coworker then told claimant, "We don't shred [the papers for closed] IRAs." Audio at ~36:24. Claimant was upset because she thought the coworker had been watching her and had remained silent while she was trying to decide how to best deal with the IRA paperwork. When the coworker agreed that claimant should give the IRA paperwork to her, claimant commented, "I can't read minds." Audio at ~37:10.

(8) Sometime before February 22, 2018, staff at the bank was advised to count and balance the bank vault earlier in the work day than previously had been done. On February 22, 2018, claimant and a coworker were discussing if they would visit the bank to the vault to buy some quarters. A second coworker overheard them and stated that she and a third coworker had already counted and balanced the vault for the day. Claimant thought the second coworker "instantly got offended" that she had wanted to buy coins from the vault. Audio at ~ 27:20. The third coworker became involved in the interaction

when she “did a big sigh,” held out her hand and “rolled her eyes” at claimant. Audio at ~27:20, ~29:43. Claimant commented, “You don’t have to be rude.” Audio at ~27:20.

(9) Claimant then sent a message to the branch manager stating that the coworkers had been rude to her and she “was sick of being treated like crap.” Audio at ~11:35. The branch manager later spoke with claimant and both coworkers. The coworkers did not think they had been rude to claimant that day, they thought they had been providing information to claimant and they thought that claimant tended to misconstrue their actions as being rude when that was not their intention. The branch manager informed claimant of what the coworkers had said and remarked that part of the problem might be how claimant interpreted her coworkers’ communications. Claimant told the branch manager that the branch manager had chosen to take the coworkers’ side and abruptly discontinued the discussion by walking away. Later, the coworker with whom claimant had discussed visiting the vault for quarters on February 22, 2018 contacted the branch manager because she objected to claimant having called her at home to discuss what had happened that day. The coworker told the branch manager that she did not think the coworkers had been rude to claimant or to her when telling them that they had already counted and balanced the vault.

(10) On February 23, 2018, claimant emptied the branch dishwasher after lunch and put the dishes and other tableware that were in it in a cupboard. After claimant left the kitchen, a coworker told claimant that at least some of the dishes that she had emptied from the dishwasher had actually been dirty and she needed to return all of them from the cupboard to the dishwasher to be cleaned. Although claimant stated that she had not unloaded what appeared to be a dirty spatula in the dishwasher, the coworker insisted that at least some of the dishes in the dishwasher had been dirty. Claimant proceeded to remove all of the dishes from the cupboard and reloaded them into the dishwasher. Claimant felt the coworker’s communications to her were “just too embarrassing” and were the coworker’s attempt to “promote control” over claimant. Audio at ~24:57. Claimant sent a message to the branch manager that day stating that the coworker had “jumped down her throat” about the dirty dishes. Audio at ~9:58. The branch manager spoke to claimant and the coworker about the incident and each believed that the other one had been rude.

(11) On March 1, 2018, the branch manager and the branch manager’s supervisor spoke to claimant. In that conversation, the branch manager told claimant that her complaints were being taken seriously, that the branch manager was not taking sides, but that the branch manager had needed to speak with the coworkers involved in the incidents on February 22 and 23, 2018 to obtain complete information about them. The branch manager told claimant that the coworker with whom she had intended to visit the vault on February 22, 2018 did not think that the other coworkers were rude in how they told claimant that they had already counted the vault. The branch manager again told claimant that the coworkers she had accused of being rude did not think they had been rude, and that the coworkers were becoming reluctant to deal with claimant for fear that she would construe their communications as being rude and complain about them. The branch manager further told claimant that misperceptions might be contributing to the problems she thought she had with her coworkers and that, if so, she needed to take steps to correct those perceptions.

(12) The next day, March 2, 2018, claimant notified the employer that she was leaving work effective immediately. Claimant decided to quit work because she did not think her coworkers would stop their allegedly rude and poor treatment of her.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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) (January 11, 2018). 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. For a claimant with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h), good cause for leaving work is such that a reasonable and prudent person with the characteristics and qualities of such an individual would leave work.

Although claimant testified that she felt stress, cried and sometimes had “panic attacks” when thinking about work, she did not show that any of these symptoms arose from a permanent or long-term impairment. Audio at ~44:01. There is insufficient evidence in this record to apply the modified standard for showing good cause that is reserved for individuals with permanent or long-term impairments.

At hearing, claimant appeared credible and sincere when she testified about the distress she experienced in the workplace, particularly from her perceptions of the behavior of two of her coworkers. However, the objective standard of a reasonable and prudent person, rather than one based on claimant’s subjective experience, must be applied to determine if claimant had good cause for leaving work. As described by claimant, it did not appear that any of the behaviors of the coworkers were sufficient to create an objectively grave, abusive or oppressive situation. See *McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits).<sup>1</sup> While claimant did generally refer to being called “stupid” and “a dummy” by at least one coworker, which viewed alone might be considered a form of abuse, she was unable to recall specific times when this happened, and also testified that the coworker “made it a joke” to use those terms directed at claimant. Audio at ~30:53, ~41:44, ~42:49. On this record, claimant did not show, more likely than not, that the names the coworker used in reference to her constituted abuse or that it was other than a failed attempt at bad humor. With respect to the specific instances claimant described at hearing to show her coworkers’ poor

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<sup>1</sup> See also Employment Appeals Board Decision 13-AB-0502, April 2, 2013 (ongoing unwanted sexual advances and touching despite making complaints); Employment Appeals Board Decision 12-AB-3213, January 8, 2013 (ongoing sexual harassment); Employment Appeals Board Decision 12-AB-3173, December 14, 2012 (ongoing verbal abuse despite complaints); Employment Appeals Board Decision 11-AB-3647, February 9, 2012 (sexist and ageist remarks); Employment Appeals Board Decision 11-AB-3308, December 22, 2011 (supervisor’s ongoing verbal abuse and fits of temper); Employment Appeals Board Decision 11-AB-2864, December 12, 2011 (management’s ongoing ageist comments and attitudes); Employment Appeals Board Decision 11-AB-3063, October 28, 2011 (corporate culture hostile to women); Employment Appeals Board Decision 11-AB-2272, September 6, 2011 (supervisor’s regular fits of temper and verbal abuse).

treatment of her, claimant's testimony about them forms the basis of the findings of fact. As described, those incidents are at least as susceptible of a non-abusive, non-grave interpretation as they are of an interpretation that would support a finding of good cause. Indeed, as to the February 22, 2018 incident about the bank vault, claimant did not dispute that an independent witness perceived it differently from her and did not think that the coworkers' behavior toward claimant that day was rude or objectionable. On this record, claimant did not meet her burden to show that grave circumstances caused her to leave work.

Claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-110793 is affirmed.

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

**DATE of Service:** July 13, 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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