

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0031

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 9, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105446). Claimant filed a timely request for hearing. On November 15, 2013, ALJ Monroe conducted a hearing, and on December 9, 2013, issued Hearing Decision 13-UI-05940 affirming the Department's decision. On January 7, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Simos Insourcing Solutions Corporation employed claimant as a laborer from February 14, 2012 to July 22, 2013. Claimant's job consisted of cutting, peeling, washing and packaging foods.

(2) On July 20, 2013, claimant, an African immigrant who speaks little English, was peeling produce with a knife when she was approached by a supervisor and told to go home without explanation. At the time the supervisor approached her, claimant had been working three hours. When claimant inquired why she was being sent home, the supervisor went to get "Fred", the "big boss." Transcript at 6, 13. Shortly thereafter, Fred angrily approached claimant as she was peeling produce and, without explanation, told her "get out" while he grabbed her hand and twisted it until the knife fell, almost cutting claimant. Transcript at 6. When she went to her locker to change clothes and get her belongings, Fred followed her and said, "You have to leave. Leave now...there's no time to change...get out" and pushed her out of the building. Transcript at 6.

(3) In the past when claimant was asked to leave early, she did so without asking why. After the July 20 incident, she felt “scared” and threatened by Fred because of his anger and actions in twisting her hand until she dropped the knife and pushing her out of the building. Typically Fred brought employees to his office to discuss problems. Transcript at 9, 10. On July 21, 2013, claimant had one of her children prepare a letter of resignation for her in which she stated, “As a human being, I deserve respect, dignity and rights” but which did not specifically describe the incident. Transcript at 21.

(4) On July 22, 2013, claimant went to work and reported the incident to the employer’s human resources manager, Steve. Claimant explained her fear and told Steve that she felt threatened by Fred’s actions. Steve told her to “let it slide,” “forgive Fred, forgive the company,” and gave claimant no indication that he intended to pursue the matter. Transcript at 9, 10. Claimant gave the human resources manager her letter of resignation.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 an additional period of time.

In the Department’s initial determination, the authorized representative found as fact that claimant left work because “she felt the employer was not giving her enough hours” and concluded claimant voluntarily left work without good cause. Decision # 105446. Notably, the authorized representative made no findings regarding Fred’s physical confrontation with claimant and claimant’s resignation letter. The ALJ agreed that claimant left work without good cause, reasoning that claimant had the reasonable alternative of reporting the incident before quitting, which the ALJ concluded that claimant failed to do because her resignation letter listed July 21, 2013 as its effective date. However, the ALJ’s analysis ignores the employer’s evidence and her own finding that claimant actually quit on July 22. The ALJ’s analysis also fails to recognize that claimant did not submit the resignation letter until after she had talked with the employer’s human resources manager on July 22. During their discussion, the human resources manager asked claimant to “let it slide”, “forgive Fred, forgive the company” and return to work without giving claimant any indication that the matter at least would be investigated.

The material facts of this case are essentially undisputed. Although the employer’s witness testified that the employer was unaware of any physical confrontation between claimant and Fred that occurred on July 20, that witness had no first-hand knowledge of the events of that day and neither Steve, Fred nor any other employer witness who had first-hand knowledge of the events testified. In the absence of any reason to disbelieve claimant’s testimony, we gave her account of those events more weight than the employer’s version based on its lack of knowledge of what occurred. On this record, claimant was

physically assaulted by the “big boss” without cause or warning and then physically pushed out the door without explanation. When she reported the incident to the employer’s human resources manager on site, he did not dispute that it occurred but instead encouraged her to “let it slide”, and “forgive Fred, forgive the company.” More importantly, he did not give her any indication that Fred’s reportedly inappropriate conduct would be investigated, and if substantiated, that appropriate action would be taken.

Fred’s use of physical intimidation to express his apparent dissatisfaction with claimant was, at the very least, highly inappropriate and disrespectful, especially given his position of authority over claimant. The human resources manager’s apparent unwillingness to investigate the matter gave claimant no reasonable alternative but to quit her job. Claimant could not continue to work for the employer without continuing to work under “the big boss” and potentially continuing subjugation to his angry behavior. An employee does not have to endure abusive working conditions merely to avoid becoming unemployed. *See, McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979); *Sandra R. Seidel* (Employment Appeals Board, 06-AB-2057, December 19, 2006). A reasonable and prudent laborer of normal sensitivity, exercising ordinary common sense in claimant’s circumstances, would find them “oppressive”, and would want to abandon them. Under *McPherson*, claimant had good cause to quit work when she did.

Claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 13-UI-05940 is set aside, as outlined above.

Susan Rossiter and Tony Corcoran;  
D. E. Larson, not participating.

**DATE of Service:** January 24, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.