EO: 300
BYE: 201501

State of Oregon
**Employment Appeals Board**
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

# EMPLOYMENT APPEALS BOARD DECISION

**2014-EAB-0502**

*Reversed*
*Disqualification*

**PROCEDURAL HISTORY:** On January 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130746). Claimant filed a timely request for hearing. On March 20, 2014, ALJ Wyatt conducted a hearing, and on March 21, 2014 issued Hearing Decision 14-UI-13169, reversing the Department's decision. On March 27, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted a written argument that disputed certain of the ALJ's findings, and included several emails that were neither offered into evidence nor discussed at the hearing. The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The employer also failed to show that factors or circumstances beyond its reasonable control prevented it from offering the emails and other new information into evidence during the hearing as required by OAR 471-041-0090 (October 29, 2006). Because the employer did not comply with the applicable regulations, EAB did not consider either the written argument or this new information. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT**: (1) Grand Management Services, Inc. employed claimant as a portfolio manager from January 14, 2010 until January 10, 2014. The employer managed government-subsidized housing units located throughout Oregon.

(2) During claimant's employment, claimant had some disagreements and conflicts with one of the employer's female co-owners. Once, claimant left work early because she thought she was going to cry about the manner in which the female owner decided to handle work issues.

(3) In May 2013, the female co-owner was upset at claimant because the co-owner thought that claimant had told a co-worker that another of the co-owners had signed a letter. The female co-owner "yelled" at claimant. Transcript at 12. Claimant spoke to one of her supervisors about this incident and the supervisor told claimant "just to let it go." Transcript at 12. Beginning in approximately June 2013, claimant thought that her working relationship with the female co-owner was deteriorating.

(4) In June 2013, the employer's female co-owner discussed claimant's marital status with claimant, and commented about steps she could take to find a husband. Later in June 2013, the female co-owner purchased a subscription to the eHarmony dating website for claimant. Claimant had not asked for this subscription.

(5) In approximately early September 2013, claimant had an appointment with her physician. Claimant's physician informed her that her blood pressure was "at stroke level." Transcript at 11. The physician prescribed medicine to control claimant's blood pressure. In November 2013, the female co-owner again "yelled" at claimant over a work related matter.

(6) On January 10, 2014, claimant had arranged a meeting with the female co-owner to discuss a raise. However, when claimant arrived at the meeting, the co-owner wanted to discuss the employer's concerns about claimant's attitude in dealing with coworkers and other managers. The co-owner told claimant that claimant treated the site managers "like crap." Transcript at 7. With respect to claimant's communication style, the co-owner commented that, "[T]he problem [with claimant's communication] is that instead of talking like a real person, everything with [claimant] has to be like a government worker and that [claimant is] not even able to be close to another person." Transcript at 6. At this point, claimant became angry and did not address the raise about which she had arranged the meeting. Instead, claimant told the co-owner that she quit. Claimant left the workplace and did not return.

**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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant testified that she had high blood pressure. For purposes of this decision, it is assumed that claimant's high blood pressure was permanent or long-term and constituted a "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with this 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.

In Hearing Decision 14-UI-13169, the ALJ concluded that claimant had good cause for quitting work because she demonstrated, more likely than not, that "she faced an oppressive situation in the workplace and she should not be required to endure the owner's treatment of her." Hearing Decision 14-UI- 13169 at 2. The ALJ reasoned that since claimant testified at hearing that the co-owner had treated her poorly and the only evidence that the employer provided to dispute her contentions was hearsay, the employer's

evidence was not sufficient to rebut claimant's characterization of the employer's behavior. Hearing Decision 14-UI-13169 at 2. We disagree.

Claimant clearly testified at hearing that she decided to quit work because of the co-owner's statement during the January 10, 2014 meeting. Transcript at 5-6. Despite the ALJ's conclusions, there was absolutely no evidence in the record that claimant left work because she thought her health was in jeopardy as a consequence of the impacts of workplace stress on her health. Because the co-owner's behavior during the January 10, 2014 meeting was the proximate cause of claimant's decision to quit work, it is the proper focus of the determination whether claimant had good cause to leave work.

Based on claimant's description of the words that were exchanged during the January 10, 2014 meeting, it does not appear that the co-owner was unprofessional to claimant, let alone oppressive, as the ALJ concluded. Although the co-owner used the work "crap" to describe claimant's treatment of certain managers, that word is a part of the common vernacular and is not, in and of itself, offensive. Likewise, the words the co-owner used to describe claimant's communication style were not insulting and, although the co-owner concluded with what might be construed to have been a comment about claimant's personal circumstances, the co-owner's comment might just as readily be construed as an observation about claimant's workplace relationships. In either case, the comment was not so beyond the bounds of professionalism that a reasonable and prudent person would have considered it grounds to leave work. Most notably, claimant did not contend that the co-owner shouted at her during the January 10, 2014 meeting, called her names, endlessly berated her, issued a tirade, had a tantrum or engaged in like behavior that might reasonably be considered offensive. In considering whether claimant had good cause to leave work, we disagree with the ALJ's implicit premise that claimant's general characterization of how she was treated must be accepted if no witnesses with first-hand knowledge testify to rebut that characterization. It must also be determined whether claimant presented sufficient specific evidence to support her characterization of how she was treated and whether, based on that specific evidence, claimant objectively demonstrated that a reasonable and prudent person would have concluded that he or she had a grave reason to leave work. In this case, the specific evidence that claimant presented did not demonstrate that the co-owner's behavior during the January 10, 2014 meeting was a grave reason to leave work.

Claimant also contended that the co-owner had engaged in behaviors other than at the January 10, 2014 meeting that claimant considered offensive. Transcript at 12, 14. To the extent these other behaviors might have influenced claimant to quit on January 10, 2014, we will address them. EAB has previously held that owner's or supervisor's behavior may constitute good cause to leave work if it creates on ongoing oppressive or abusive work environment. *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); *Beth A. Jackson* (Employment Appeals Board, 13-AB-0502, April 2, 2013) (ongoing unwanted sexual advances and touching despite making complaints); *Brenda A. Kordes* (Employment Appeals Board, 12-AB-3213, January 8, 2013) (ongoing sexual harassment); *Stephen G. Wilkes* (Employment Appeals Board, 12-AB-3173, December 14, 2012) (ongoing verbal abuse despite complaints); *James D. Hayes* (Employment Appeals Board, 11-AB-3647, February 9, 2012) (sexist and ageist remarks); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor's ongoing verbal abuse and fits of temper); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management's ongoing

ageist comments and attitudes); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (supervisor's regular fits of temper and verbal abuse). Accepting claimant's testimony as accurate, two discrete incidents in which the owner yelled at claimant, one occurring approximately seven months and the other occurring approximately two months before claimant decided to quit, do not, without extenuating circumstances, give rise to the type of ongoing abusive or oppressive behavior that the decided cases have required to find good cause to leave work. Claimant did not provide evidence of any such extenuating circumstances, and given the remoteness in time of the incidents from claimant's decision to quit, we question whether they in any manner caused claimant to quit. Moreover, that the co-owner purchased and gave to claimant a subscription to eHarmony, while it might have been misguided in light of usual workplace norms, was not a conspicuously offensive gesture. Without more, a reasonable and prudent person would have not have concluded that this gift was a form of personal abuse or that it created an oppressive work environment.

Claimant did not demonstrate that there were grave reasons motivating her decision to quit work and she did not therefore show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-13169 is set aside, as outlined above.

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

**DATE of Service: <u>April 30, 2014</u>**

**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.