

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1217**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140832). Claimant filed a timely request for hearing. On June 30, 2014, ALJ Seideman conducted a hearing, and on July 3, 2014 issued Hearing Decision 14-UI-20825, affirming the Department's decision. On July 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Advanced RV Painting and Repair LLC employed claimant from May 1, 2013 to April 15, 2014 to perform body work on vehicles.

(2) Since approximately September 2013, claimant's supervisor was often dissatisfied with the quality of claimant's work. The supervisor had to repeat instructions on how to perform certain tasks, and sometimes had to redo or finish claimant's work. Claimant's supervisor expressed his dissatisfaction by using foul language on a regular basis. On one occasion, he threw a drill on the ground.

(3) Claimant is deaf. He began to communicate with the supervisor in writing to understand him and correct his mistakes.

(4) Claimant complained to the owner that the supervisor was often dissatisfied with claimant's work and acted in a frustrated manner toward claimant. The owner told claimant he and the supervisor became frustrated when they had to explain to claimant how to perform work tasks multiple times. Claimant was dissatisfied with the owner's response.

(5) On April 14, 2014, claimant's supervisor used foul language when he became frustrated with claimant.

(6) On April 15, 2014, claimant quit work due to how his supervisor allegedly treated him.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude 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 P2d 722 (2010). Claimant is deaf, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that 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 his employer for an additional period of time.

Claimant left work because of how his supervisor treated him. It is undisputed that the supervisor used foul language on a regular basis, although the supervisor testified that he did not direct the foul language toward claimant or call him names. Transcript at 24, 28. However, claimant also alleged the supervisor regularly made an obscene gesture with his middle finger toward claimant, and that he made such a gesture, then hit the hood of the vehicle claimant was working on when he became frustrated with claimant on April 14. Transcript at 5 to 8. At hearing, the supervisor denied that he ever made obscene gestures toward claimant or hit the hood of a vehicle. Transcript at 24. The employer’s owner testified that claimant never complained about the supervisor making an obscene gesture or hitting a vehicle. Transcript 21. The evidence as to whether the supervisor made obscene gestures toward claimant and hit the vehicle is equally balanced. Where the evidence is equally balanced, the party with the burden of persuasion, here, claimant, has failed to meet his evidentiary burden. Consequently, claimant failed to establish that the supervisor made obscene gestures toward him or hit the vehicle claimant was working on. Although the use of foul language in the workplace is unprofessional, claimant did not show by a preponderance of evidence that the supervisor’s behavior toward him was so egregious that no reasonable and prudent person who is deaf would have continued to work for his employer for an additional period of time. Absent such a showing, claimant failed to establish that he quit with good cause. Claimant is therefore disqualified from the receipt of unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-20825 is affirmed.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, not participating.

**DATE of Service:** August 13, 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On

the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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