

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0017

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 71816). Claimant filed a timely request for hearing. On November 13, 2014, ALJ M. Davis convened a hearing at which claimant did not appear, and issued Hearing Decision 14-UI-28655, dismissing claimant's request for hearing. On November 16, 2014, claimant filed a timely request to reopen the hearing. On December 30, 2014, ALJ Clink conducted a hearing and on January 6, 2015 issued Hearing Decision 15-UI-31342, allowing claimants request to reopen and concluding claimant voluntarily left work without good cause. On January 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

Because no adversely affected party sought review of that portion of Hearing Decision 15-UI-31342 which allowed claimant's request to reopen, EAB confined its review to the issue of claimant's work separation.

**FINDINGS OF FACT:** (1) Wal-Mart Associates, Inc. employed claimant from January 1, 2001 until August 1, 2014, last as a maintenance associate.

(2) Over the last several years, including during his employment, claimant sometimes had disturbing dreams. Claimant also disliked people speaking to him in a loud voice. Claimant never saw any doctors about these dreams, his aversion to loud voices or any other symptoms. Claimant never received a diagnosis for the cause of the dreams or his dislike of loud voices. Claimant never asked the employer for any accommodations and never told the employer that he had any mental or physical conditions that impaired his performance in the workplace.

(3) On August 19, 2014, claimant tried to get the attention of a store manager to unlock the bottle room for him. The manager was on the phone. When claimant persisted and raised his voice in front of customers and coworkers, the assistant manager asked claimant to calm himself and also in a loud voice stated that she would open the bottle room in a moment. Claimant became frustrated, threw his employee identification badge at the front desk, said he was "done" and left the workplace. Audio at ~23:35.

(4) Very shortly after claimant left the workplace on August 19, 2014, one of the assistant managers arrived at the workplace. The assistant manager was told that claimant had abruptly left the workplace and no one was certain about claimant's intentions. Approximately a half hour after claimant had left the workplace, the assistant manager telephoned him. When claimant answered the phone, the assistant manager asked him what had happened at the store and if he was alright. Claimant told the assistant manager, "I can't do this anymore. I'm tired of being yelled at. I'm done with you guys." Audio at ~22:23. Claimant then hung up. The assistant manager called claimant again in a few minutes. Claimant answered again and repeated what he had said during the first call and again hung up on the assistant manager. After two or three hours, the assistant manager called claimant for the third time to "find out his side." Audio at ~23:46. Claimant's response was identical to what he stated in the first two calls and he hung up on the assistant manager for the third time. The assistant manager then processed claimant's work separation, and called claimant a fourth time and told him he could pick up his final check at his convenience. Claimant said, "Fine" and hung up again on the assistant manager. Audio at ~24:18. Later that evening, claimant came to the store to pick up his final check. At that time, the assistant manager claimant "if he was okay" and "if there was anything he wanted to talk about." Audio at ~24:34. Claimant responded, "Nope," took his check and left the workplace. Audio at ~25:06. Thereafter, claimant did not return to the workplace.

(5) On August 19, 2014, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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 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.

While claimant referred in his testimony to disturbing dreams he had intermittently experienced over several years and to his "intense" emotions when people "yelled and screamed" at him, he did not link these symptoms with any recognized conditions, disorders or impairments that might impact the level of his reactions to perceived stressors. Audio at ~14:46, ~14:50. As claimant vaguely described them, while his reactions might be consistent with post-traumatic stress disorder (PTSD), they are also consistent with simply being short-tempered or a having a tendency to precipitous decision-making. Notably, claimant had never consulted a health care provider about his dreams and his dislike of

shouting, and he never told the employer of any difficulties he experienced in these areas. Audio at ~13:40, ~16:13, ~16:40, ~25:30. Given the lack of evidence in the record as to the nature of claimant's stated difficulties, despite the ALJ's repeated inquiries, claimant failed to demonstrate that he had any long-term mental impairment that would require an adjustment to the standard for determining whether he had good cause to leave work under the circumstances that he described. *See* OAR 471-030-0038(4).

In describing the reasons for his decision to leave work, claimant stated that that he was unable to deal with the store manager speaking loudly to him, and that he did not want to "trigger" a relapse into apparent drinking problem that he had previously had. Audio at ~15:39, ~15:47, ~16:05. However, claimant did not describe the behavior of the manager in a manner that might explain his disproportionate reaction to quit work. Claimant also did not suggest an association between the manager's behavior and triggering his drinking or how the manager's behavior caused him to make an immediate decision to quit, and why he remained unwilling to tell the assistant manager over several hours of attempted phone conversations what had happened that led to him leaving the workplace. In addition, claimant did not dispute that he was aware of the employer's human resources department and that he could have sought assistance from them or from the employer's management. Instead, claimant stated that he did not complain to management about the behavior because he did not want to cause trouble for other employees and because "I just didn't feel like doing that." Audio at ~17:42, ~17:52. Conspicuously, claimant did not mention that his emotional reactions, or PTSD, prevented him from accurately perceiving the situation and formulating an appropriate response to it.

On the record as it exists, a reasonable and prudent person, exercising ordinary common sense, would not have concluded that he needed to leave work after the store manager responded irritably on one occasion to a request that he had made. Moreover, a reasonable and prudent person, who wanted to remain employed, would not have continued to insist that he wanted to quit after the assistant manager tried, in good faith, over a period of several hours (and after claimant's immediate emotional reactions had presumably dissipated) to discuss the advisability of his decision to leave work. Because claimant did not behave as a reasonable person, with or without PTSD, claimant did not establish good cause for leaving work when he did.

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

**DECISION:** Hearing Decision 15-UI-31342 is affirmed.

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

**DATE of Service:** February 24, 2015

**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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