

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0338**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, within fifteen days of a planned quit without good cause (decision # 92059). Claimant filed a timely request for hearing. On March 5, 2015, ALJ R. Davis conducted a hearing, and on March 6, 2015 issued Hearing Decision 15-UI-34753, concluding claimant voluntarily left work without good cause. On March 26, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Capstone Wealth Advisors, LLC employed claimant from September 28, 2012 to January 8, 2015 as a receptionist and assistant.

(2) The employer had four owners, including one who was the financial advisor, and another who was the human resources representative.

(3) In November 2012, the employer's financial advisor stated, "[Claimant] is incompetent. She doesn't know what she's doing and I don't know why she's working here," in front of claimant and other employees at a staff meeting. Transcript at 21-22.

(4) On October 9, 2013, the financial advisor approached claimant, poked her in the back, and reprimanded her for asking to leave work early with only two hours' notice. Claimant complained about the incident to the human resources representative, who discussed it with claimant and the financial advisor, and instituted a new harassment policy.

(5) Prior to November 2014, claimant worked 20 hours per week from May through September, and 34 hours per week during the other seven months of the year. In November 2014, the employer's owners determined claimant's hours should be reduced from 34 to 20 hours per week year-round due to business needs. Claimant told one of the owners she was dissatisfied with the reduction in hours. The owners decided to keep claimant working for 34 hours per week on a trial basis, but informed claimant her hours were subject to reduction at any time.

(6) In December 2014, an owner told claimant to ask the financial advisor to change one word in a company invitation. Claimant asked the financial advisor in an email, and he responded by saying, "no," without explanation. Claimant considered his response to be rude. Later the same day, the financial advisor complained to claimant that he was "tired of doing [her] shit." Transcript at 15.

(7) In December 2014, claimant was dissatisfied when the financial advisor disagreed with her in front of other employees regarding how to complete deposits. Claimant was also concerned she might violate the employer's deposit policy if she completed the deposits incorrectly.

(8) Later in December 2014, claimant put the original of a handwritten report she prepared into the financial advisor's folder for him to review. That evening, the financial advisor reviewed the report in his folder, and noticed it was a photocopy, and not an original document as required. The financial advisor wrote, "Where's the original?" on the document, and left it for claimant. Transcript at 54. The next morning, claimant saw the handwritten message on the document and told the financial advisor she did not understand because she had submitted an original. The financial advisor insisted he needed an original document. Claimant followed the financial advisor down the hall, insisted the document was an original, and asked the financial advisor, "Are you calling me a liar?" The financial advisor responded, "yes," and told claimant to do the report again. Claimant refused, and the financial advisor told her she was "on thin ice." Transcript at 7-8. The financial advisor's assistant told claimant to stop her behavior.

(9) Claimant complained about the photocopy incident to the human resources representative, who told claimant he would investigate and discuss the matter with her when she returned from vacation in early January 2015. The human resources representative investigated the incident and determined that the document was a photocopy, and considered claimant to be at fault for the incident because, instead of making a new report, she insisted the document was an original, followed the financial advisor down the hall, and asked if he was "calling her a liar."

(10) On January 5, 2015, claimant returned to work after two weeks of vacation. Regarding the photocopy incident, the owners told claimant they expected her to make a new report if asked to do so by an owner, and that the financial advisor would probably not change his behavior. The owner also told claimant her hours were being reduced from 34 to 20 hours per week.

(11) Throughout her employment, the financial advisor often asked claimant to "go fetch lunch" and referred to claimant as his "gopher." Transcript at 22-23. The financial advisor's assistant also was sometimes rude to claimant.

(12) Claimant received treatment for anxiety throughout her employment. Claimant attributed her anxiety to work stress. Her anxiety caused her to have difficulty sleeping, and she used medication to help her sleep. Claimant sometimes had arm pain or difficulty swallowing while at work due to stress.

(13) On January 6, 2015, claimant notified the employer she was quitting work, effective January 20, 2015.

(14) On January 8, 2015, claimant was not talkative at work, but did respond to others' questions. An owner told claimant that she was making the financial advisor's assistant uncomfortable by "being so quiet" at work. Transcript at 20. Claimant left work rather than continuing to work through her notice period.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude that 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 had anxiety, 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 her employer for an additional period of time. However, ORS 657.176(6) provides as follows:

For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The separation would be for reasons that constitute good cause;
- (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and
- (c) The actual voluntarily leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving;

then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

On January 6, 2015, claimant told the employer she would voluntarily leave work on January 20, 2015. She subsequently quit her job on January 8, 2015. Because claimant left work less than 15 days prior to her planned quit date of January 20, 2015, we must consider the applicability of ORS 657.176(6) to claimant's voluntary leaving. To consider whether this statutory provision applies to claimant's work separation, it is first necessary to decide if the planned quit was for reasons that constituted good cause. ORS 657.176(6)(a). To the extent that claimant planned to leave her job because she was upset by her supervisor's behavior and the reduction in her hours, claimant failed to establish that the planned quit was for good cause.

To the extent claimant planned to quit work on January 20 because of how the financial advisor treated her, claimant did not meet her burden to show good cause to quit. Although a supervisor's behavior may be good cause to leave work if it creates an "abusive" or "oppressive" work environment, claimant did not establish that the financial advisor's behavior met that threshold. *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). The financial advisor made comments that were unprofessional and rude. However, claimant did not show that the comments were so offensive or frequent that they created a situation of such gravity that claimant had no reasonable alternative but to quit. It was also inappropriate for the financial advisor to poke claimant. However, the employer addressed claimant's complaint about the matter by instituting a new harassment policy, and the record contains no evidence of subsequent "touching" incidents. The record does not show that the financial advisor yelled, used foul language regularly, threatened claimant physically, or otherwise engaged in offensive conduct that was so frequent or severe as to rise to the level of being "abusive" or "oppressive." Nor does the record show that claimant's work-related stress created a health situation of such gravity that claimant had no alternative but to leave work when she did. Rather than quitting, claimant had the reasonable alternative of continuing to work and complaining to the human resources representative if additional incidents occurred.

To the extent claimant planned to quit work on January 20 because the employer reduced her work hours, claimant did not show by a preponderance of the evidence that her planned quit was for good cause. Under OAR 471-030-0038(5)(e), an individual who leaves work due to reduction in hours has left work without good cause "unless continuing to work [for the employer] substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." The record contains no evidence that working 20 hours per week interfered with claimant's return to full time work. Because claimant had worked 20 hours per week for five months per year in the past, we infer that the cost of her part-time work exceeded her earnings. Claimant offered no evidence to the contrary. Claimant therefore failed to meet her burden to demonstrate good cause to quit her job due to a reduction in hours. In sum, claimant failed to show that no reasonable and prudent person with anxiety would have continued to work for the employer after January 20, 2015.

Thus, because claimant failed to show that the planned quit on January 20, 2015 would have been for reasons that constitute good cause, ORS 657.176(6) does not apply to her work separation. Claimant is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work on January 8, 2015. Claimant failed to make such a showing.

Claimant quit her job on January 8 because she was upset when one of the owners told her she was making the financial advisor's assistant uncomfortable by remaining quiet, and not talking, at work. Given that claimant was being quiet at work, but was responding to questions from other employees, claimant's behavior may not have warranted the owner's comment, but the owner's comment was not offensive, and thus did not create a situation so grave that the claimant had no alternative but to immediately quit her job. Claimant had the reasonable alternative of addressing the matter further with the owner who made the comment, or human resources, if the owner continued to make such comments. Claimant failed to show that on January 8, 2015, no reasonable and prudent person with anxiety would continue to work for the employer.

Because claimant failed to prove that she had good cause to quit work on January 8, 2015, she is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-34753 is affirmed.

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

**DATE of Service:** May 18, 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 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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