

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0405**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 113838). Claimant filed a timely request for hearing. On March 25, 2015, ALJ Wyatt conducted a hearing, and on April 2, 2015 issued Hearing Decision 15-UI-36225, affirming the Department's decision. On April 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. In his written argument, claimant re-asserts his concerns about servers not sharing tips with him. Claimant resigned abruptly on January 14, 2015 because claimant thought the owner had taken no effective action to deal with the perceived theft issue. However, during the hearing claimant acknowledged that, as a result of his complaint to the owner the previous season, his coworkers began complying with the tipping policy:

BY THE ALJ:

Q Mr. Brewer, so based on what Ms. Bergerson said, there actually was quite a response to your letter to the Owner as far as a staff meeting on June 20<sup>th</sup>, 2014, where tip out was one of the main topics, personally having Craig meet personally with Carla and also posting a notice of percentages. So did you not know that these things had happened?

A I knew. I felt aware that something had changed because I did notice when I did come back that Carla was doing her tips accordingly to the policy that Craig had – that had always been the policy. And I kind of could tell because Carla made it a point several nights to tip me out in change. So I kind of got the feeling that maybe she had been talked to because she seemed to be a little bit angry about it, and most people weren't angry about tipping out bartenders. So I feel that I maybe knew that something had been said to her, and it was fixed for a portion of the summer when I was behind the bar when I first had come back. I did notice that changes had –

like people were doing it and paying strict attention to making sure they did tip what they were supposed to.

But by the time about August or mid-August when the summer was getting – you know, had gone another month or six weeks, I noticed the same types of scenarios just starting to play out where Carla was like, “Okay, the eyes are off me again”, and you know, just walking out without doing it, or tipping the next day. Yeah, it was just more of the nonsense back and forth stuff.

Q Okay. So as far as things happen – I mean, so things had obviously, as you said there for a while got better. But you didn’t work past October, you said October 11<sup>th</sup>, I think it was, 2014. So I guess my question is when you were scheduled to come back on the men – on the menu – scheduled to come back on the – at work, you were on the schedule again for January 14<sup>th</sup>, 2015, I mean, I’m thinking wouldn’t it have made sense to go back for at least even a short period of time to find out whether things were, you know, the restaurant was being run more to your ethical, you know, standards before deciding whether you would work there again or not?

A I would say your correct there, sir. I would agree with you there. And I really – I did attempt to do that. But my body wasn’t going to let my brain out talk it. *Transcript at 30-32.*

At the time claimant quit work, he did not raise the tipping issue. As indicated above, during the hearing claimant admitted that his complaint from the previous season had been addressed at least temporarily, and that the general manager, Ms. Burgerson, would often go above and beyond to help him. We agree with the ALJ that claimant had reasonable alternatives to quitting work when he did.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 15-UI-36225 is affirmed.

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

**DATE of Service:** May 12, 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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