

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0518**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 131436). Claimant filed a timely request for hearing. On May 21, 2015, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for June 4, 2015. On June 4, 2015, ALJ Murdock conducted a hearing at which claimant failed to appear, and issued Hearing Decision 15-UI-39530, dismissing claimant's request for hearing for failure to appear. On June 24, 2015, claimant filed a request to reopen the hearing. On July 20, 2015, ALJ Holmes-Swanson conducted a hearing, and on July 23, 2015 issued Hearing Decision 15-UI-41914, allowing claimant's request to reopen, and concluding claimant voluntarily left work without good cause. On July 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party applied for review of the portion of Hearing Decision 15-UI-41914 allowing claimant's request to reopen the June 4, 2015 hearing. EAB therefore limited its review to whether claimant is disqualified from receiving benefits based on her work separation from the employer.

**FINDINGS OF FACT:** (1) Salmon River Contractors Inc. employed claimant from July 22, 2011 to January 20, 2015 as an office manager.

(2) In April 2014, the employer discharged claimant's spouse. On or about January 13, 2015, claimant learned that the employer's owner had given negative work references to prospective employers when claimant's husband applied for work with them.

(3) Claimant felt stress from the information she received about the owner's statements about her husband, and began to experience migraine headaches. On January 20, 2015, claimant left work early due to a migraine.

(4) Before January 21, 2015, claimant regularly informed the owner on occasions when she would be absent or late for work. On January 21 to 23, 2015, the owner sent claimant text messages and left telephone messages for her, but claimant did not respond to his messages. Claimant did not

communicate with the owner after January 20, 2015. Claimant spoke with a crew leader each day from January 21 to 24, but did not tell him if she expected to return to work. They spoke about claimant's dissatisfaction with the owner. The crew leader told the owner he did not know if claimant would return to work.

(5) On January 24, 2015, the owner sent claimant two text messages. The first text message stated, "You and me can talk all the shit you want, but I'm still 36 years old with a multi-million dollar company and you're not. Thanks so much for the sabotage you created when I've done nothing but help you [and your husband]. You are bad people, full of jealousy. It's sad. Thank you both." Transcript at 13. The second text message stated, "I need these files back in my office, and the rest of my files. I'm calling the police." Transcript at 13. Claimant was not willing to return to work after she received the text messages. The employer had continuing work available for claimant after January 24, 2015.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude claimant voluntarily left work without good cause.

The first issue is the nature of claimant's work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

At hearing, claimant asserted that the crew leader told her the employer was "letting her go," during a telephone conversation on January 24, 2015. Transcript at 11. The employer, however, contended that claimant voluntarily left work the same day. Transcript at 28-30. Claimant did not contact the owner after she left work early on January 20, 2015, despite his repeated telephone and text messages to her on January 21 to 24, 2015. Claimant also admitted at hearing that she was unwilling to return to work after she received the owner's text messages on January 24, 2015. Transcript at 12. Claimant's admission that she was unwilling to return to work and her failure to contact the owner or return to work show she was unwilling to continue working for the employer after January 24, 2015. We therefore conclude claimant's work separation was a voluntary leaving.

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). The standard for showing good cause is modified for a claimant who has a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with such 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.

Although claimant experienced migraines during the week before her employment ended, the record does not show if claimant's migraine condition was a permanent or long-term impairment. Thus the

record does not establish that claimant's migraine condition was the type to require the application of the modified standard for showing good cause to leave work. Claimant's decision to leave work is thus evaluated according to the actions of a reasonable and prudent person without a long-term or permanent impairment.

Claimant quit her job because she was upset about the negative statements the owner made about her husband to prospective employers and about her and her husband in the text messages he sent her on January 24, 2015. Transcript at 12, 14-15. Claimant did not show that the statements created a situation of such gravity that she had no reasonable alternative but to leave work when she did. Claimant had the reasonable option of attempting to discuss her concerns with the owner. Before he sent the text messages to claimant on January 24, the owner had left claimant several telephone and text messages. There is no evidence to show the telephone or text messages from the owner before January 24 were hostile in tone. Claimant did not return the messages. In the absence of any attempt by claimant to speak to the owner regarding her concerns, claimant failed to show that doing so was a futile act. Nor did claimant show that the owner's statements about her husband were false, or that the statements were otherwise so offensive that she had no reasonable alternative but to quit when she did. Nor did claimant show that, despite her migraines, she had to quit work immediately to preserve her health.

Claimant quit work without good cause. She is thus disqualified from the receipt of unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-41914 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: September 9, 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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