

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0867**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135725). Claimant filed a timely request for hearing. On June 19, 2015, ALJ Wipperman conducted a hearing, and on June 26, 2015 issued Hearing Decision 15-UI-40767, affirming the Department's decision. On July 16, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Finn Hill Vineyards, Inc. employed claimant as winemaker from July 1, 2009 to March 25, 2015.

(2) On March 24, 2015, claimant gave his assistant an instruction that the assistant did not immediately follow. Claimant felt the assistant had been insubordinate and had a poor work ethic. Claimant had previous concerns about the assistant's work ethic and professionalism, and decided to discharge the assistant. Claimant told the owner he was discharging the assistant, but the owner told claimant he could not. Claimant and the owner disagreed over claimant's authority to discharge the assistant. Claimant, the owner and the assistant all yelled at each other during the disagreement.

(3) Later the same day, the owner decided to reassign the assistant to a general manager position. The owner met with claimant and the assistant about her decision. Claimant was upset by it and announced that he would not take instructions from the assistant. The owner told claimant he might have to do so. Claimant then said that he quit work. The owner told claimant she refused to accept the resignation at that time, and claimant took the rest of the day off.

(4) The owner later invited claimant to meet with her and the assistant the following day. Claimant refused to meet with the assistant, but agreed to meet with the owner.

(5) On March 25, 2015, the owner and claimant met. The owner told claimant that she would not change her decision to make the assistant into the general manager. She told claimant he could continue working as winemaker. Claimant did not want to continue working if he would have to report to the assistant. Claimant said he would not work with the assistant, would not help him with anything, and would not allow him into the winemaking area in the future. Claimant also said he wanted to continue doing certain things, like customer relations, that the owner wanted the assistant to assume as part of the general manager duties. Claimant asked to take time off through the weekend to, among other things, decide whether he wanted to continue working. The owner agreed.

(6) After the meeting, the owner sent claimant an email stating that she had decided to accept his March 24, 2015 resignation.

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

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).

Claimant argued that he did not quit work, claiming that he “never resigned.” *See* Exhibit 2 at 1. However, both parties agreed that, on March 24, 2015, claimant told the owner that he was going to quit work. On March 25, 2015 claimant refused to agree to return to work, and refused to work with or take direction from the newly appointed general manager. The fact that the owner delayed her acceptance of claimant’s March 24, 2015 resignation until March 25, 2015, or that claimant wanted to rescind or postpone his resignation until the following work week, or mistakenly believed that he had, does not change the fact that claimant was the moving party to this work separation at a time when continuing work remained available to him. The work separation was a voluntary leaving.

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). 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.

Claimant did not like working with the person the owner had just appointed as general manager, had a problem with his work ethic, thought the person had been insubordinate when claimant supervised him, wanted to discharge him, and, barring discharge, refused to work with or accept direction from the person. While he clearly felt strongly about the matter, he did not establish that his concerns about the person, or his desire not to interact with him at work, were for reasons of such gravity he had no reasonable alternative but to leave work to avoid having to interact with or take direction from the other person. Claimant did not identify any reason why his opinions of the person’s professionalism or anticipated discomfort being supervised by the person constituted a grave situation for claimant, or

establish that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant left work without good cause. He is disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Hearing Decision 15-UI-40767 is affirmed.

J. S. Cromwell and D. P. Hettle, *pro tempore*;  
Susan Rossiter, not participating.

**DATE of Service:** August 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 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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