

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0912**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 72930). Claimant filed a timely request for hearing. On July 16, 2015, ALJ Seideman conducted a hearing, at which the employer failed to appear, and issued Hearing Decision 15-UI-41622, affirming the Department's decision. On July 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument with her application for review, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also 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 as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Health Services Group employed claimant from August 25, 2008 to April 24, 2015.

(2) Claimant worked for the employer as a lead claims processor. As such, she supervised her son's girlfriend, who worked for the employer as a claims processor. Claimant's son and his girlfriend lived together with their young daughter. Claimant often cared for their daughter.

(3) In August 2014, claimant's son and his girlfriend had an argument at home. At work, the girlfriend falsely asserted to other employees that claimant's son was threatening to kill her. She then falsely asserted to the police that he was threatening to kill her. As a result, claimant's son was incarcerated. Although the girlfriend recanted and did not press charges, she obtained a restraining order against claimant's son. The girlfriend took custody of their daughter, and would not allow claimant and her son to see the child. The girlfriend continued to discuss the situation with other employees at work.

(4) Claimant suffered from hypertension, and worked at home for two weeks due to the stress and anxiety caused by her son's girlfriend's behavior. In September 2014, she asked to be demoted to claims processor so that she would no longer supervise the girlfriend, and could work from home except for monthly meetings. The employer granted claimant's request, but required her to work in the office until January 2015 before allowing her to work from home. During that time, the employer required claimant to work on projects with her son's girlfriend, causing claimant to experience continued stress and anxiety.

(5) In January 2015, claimant started working from home. However, the employer continued requiring claimant to work on projects with her son's girlfriend, and meet with her son's girlfriend in person on a monthly basis. The girlfriend sometimes refused to help claimant on their projects, and deliberately made claimant feel uncomfortable at their monthly meetings. Claimant observed that the girlfriend continued to discuss the events of August 2014 with other employees.

(6) Claimant continued to experience stress and anxiety due to having to work with her son's girlfriend, which exacerbated her hypertension. Claimant was prescribed two medications for her hypertension, and her doctor advised her to do what was necessary to reduce her stress and anxiety. Claimant lacked the skills necessary to transfer to a position that did not require her to work with her son's girlfriend. Claimant therefore decided to quit work.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant quit work with 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" typically is defined 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). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work. Both standards are objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

In Hearing Decision 15-UI-41622, the ALJ concluded that claimant quit work without good cause because working with her son's girlfriend was not so grave a situation that claimant had no reasonable alternative but to quit.<sup>1</sup> However, claimant's doctor advised her to do what was necessary to reduce the stress and anxiety that exacerbated her hypertension. Claimant's attempt to reduce that stress and anxiety by limiting the extent to which she worked with her son's girlfriend was unsuccessful. Continuing to work with her son's girlfriend therefore was not a reasonable alternative to quitting, and claimant lacked the skills necessary to transfer to a position that did not require her to do so. Claimant therefore had no reasonable alternative but to quit.

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<sup>1</sup> Hearing Decision 15-UI-41622 at 3.

Claimant quit work with good cause. She is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 15-UI-41622 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

**DATE of Service: September 4, 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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