

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1205**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120304). Claimant filed a timely request for hearing. On September 24, 2015, ALJ Frank conducted a hearing, and on September 30, 2015 issued Hearing Decision 15-UI-45148, affirming the Department's decision. On October 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument and the entire hearing record when reaching this decision.

**FINDINGS OF FACT:** (1) Spire Hospitality LLC employed claimant from March 17, 2015 until June 11, 2015 as a prep cook.

(2) Claimant knew the employer required employees' faces to be clean shaven unless an employee had a preexisting beard, or was in the process of growing a beard. Claimant shaved regularly, but had to use specific products because he had sensitive skin. In late May 2015, claimant reported to work with an unshaven face. His supervisor directed him to shave his face. Had claimant told the supervisor he was growing a beard, the supervisor would not have required claimant to shave that day. The supervisor offered claimant a used razor, which claimant refused. The supervisor then told claimant he could get a new razor from the front desk. Claimant did not tell his employer he preferred to shave at home due to his sensitive skin. Claimant used a new razor to shave at work, and the shaving caused the skin on his neck to bleed. Claimant was upset because of the bleeding, and felt embarrassed because some of his coworkers commented and laughed about the incident. Claimant did not discuss his concerns regarding the incident with the employer prior to his work separation. Claimant did not report to work with an unshaven face again.

(3) On June 11, 2015, claimant quit work because he was dissatisfied that his supervisor required him to shave at work, and felt embarrassed by how his coworkers acted toward him during the incident.

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

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) (August 3, 2011). 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 testified that the incident that prompted him to quit work was when his supervisor told him to shave his face at the end of May 2015. Audio Record at 9:16 to 9:41. Accordingly, that incident triggered claimant’s decision to quit work on June 11, 2015, and is the focus of our analysis regarding whether claimant had good cause to quit work when he did.

Claimant quit work because he was upset his supervisor required him to shave at work, and was embarrassed when his coworkers made comments and laughed at him about the incident. Claimant failed to show that the actions of the supervisor and coworkers created a situation of such gravity that he had no reasonable alternative but to leave work when he did. Claimant did not discuss the situation with the employer before he quit work. Rather, claimant testified that he believed human resources knew he was dissatisfied with his working conditions, and should have “gone to [him],” rather than claimant having to report his concerns to human resources. Audio Record at 22:54 to 23:39. However, claimant did not assert, and the record does not otherwise show, that it would have been futile for claimant to discuss his concerns with the employer. There is no evidence in the record that shows the employer would not have addressed claimant’s shaving preferences, or that it would have condoned employees’ disrespectful conduct toward other employees. Thus, to the extent claimant quit work because of the shaving incident, claimant failed to show that no reasonable and prudent person in his circumstances, exercising ordinary common sense, would have concluded he had no reasonable alternative but to quit work without first discussing his concerns with the employer.

Claimant had the burden to show that he quit work when he did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet his burden and is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 15-UI-45148 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** November 3, 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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