

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1213**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84854). Claimant filed a timely request for hearing. On September 17, 2015, ALJ Wyatt conducted a hearing, and on September 20, 2015 issued Hearing Decision 15-UI-44731, affirming the Department's decision. On October 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Cascade Warehouse Co. employed claimant in operations and sales from April 2, 2007 until June 9, 2015. Claimant previously worked for the employer from April 8, 1996 until sometime in December 2005.

(2) Beginning in approximately 2012, the employer perceived that claimant's work performance was deteriorating, and that he was sometimes inattentive at work and made careless errors. Claimant thought that one of the employer's owners and the employer's business development and marketing manager, who was the son of both of the employer's owners, were overly critical of his work and did not appreciate his contributions to the company. Claimant thought they often did not listen to him when made suggestions to improve the employer's operations or unreasonably refused to implement changes that he proposed.

(3) On Friday, May 22, 2015, one of the employer's owners met with claimant to discuss the quality of his work. During this discussion, the owner brought up several deficiencies in claimant's work performance. When claimant suggested making a change to the dispatching board that he thought would help him better perform his work, the owner rejected it. At the conclusion of this meeting, the owner told claimant that she wanted him to meet with her and the other owner on Tuesday, May 26, 2015 to continue the discussion of claimant's work performance and to try to formulate a plan to improve it.

(4) On Tuesday, May 26, 2015, claimant met with both owners. The owners did not plan to discharge claimant during the meeting and had not warned him that such an outcome was being considered. As

the meeting progressed, one of the owners again pointed out the deficiencies she perceived in claimant's work. Claimant found the meeting unpleasant because he thought the one owner was only repeating what she had said during their May 22, 2015 meeting, and he thought that she was "belittling" him and "assassinating [his] character." Transcript at 27. When claimant thought that the owner had begun to repeat herself in her descriptions of claimant's work errors, claimant "had enough." Transcript at 31. Claimant then told both of the owners, "Look, if you don't see my value and you don't see my worth to this company, I will give you my two weeks' notice right now." Transcript at 31. The owners accepted claimant's statement as a resignation.

(5) After the meeting, one of the owners sent an email to claimant to confirm that he intended to resign and his last day of work would be June 9, 2015. The owner also asked claimant to work through his notice period. In his reply, claimant confirmed that he had resigned, effective June 9, 2015, and he agreed to work through his notice period.

(6) On June 9, 2015, claimant voluntarily left work.

(7) On August 14, 2015, claimant had open heart surgery.

**CONCLUSIONS AND REASONS:** 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.

While a claimant who has a permanent or long-term physical or mental impairment is entitled to show good cause for leaving work under a modified standard, claimant's testimony that he had open heart surgery in August 2015 is insufficient to establish that the applicability of the modified standard. OAR 471-030-0038(2)(c). Claimant did not show that the cardiac issues for which he had the surgery were impairing at the time he decided to leave work or even that they later became impairing. Claimant also did not offer evidence that cardiac issues had any bearing on his decision to quit when he did. Accordingly, the general "reasonable and prudent person" standard is used to evaluate whether claimant showed good cause for his decision to leave work. Even had we applied the modified standard, however, the outcome of this decision would remain the same for the reasons explained.

Several times during the hearing, the ALJ tried, without success, to inquire into the specific reasons that claimant decided to leave work when he did. Transcript at 20, 23, 29-30. The only clear reason that claimant supplied was that he felt that he "had enough" during the May 26, 2015 meeting with the owners. Although claimant referred at hearing to his speculation that his job duties and hours might be modified as a result of the May 26, 2015 meeting, he did not refer to that speculation as motivating his decision to resign, or offer any evidence to support that such a modification would have been a grave

circumstance for him. Transcript at 20. To the extent that claimant thought, as he stated when he resigned, that the employer underappreciated him as an employee, he provided no evidence that, beyond feeling slighted, this perceived attitude harmed him in any significant way, was a grave reason for him to leave work or that a reasonable and prudent person would have left work because of it. To the extent that claimant considered the discussion with the owners on May 26, 2015 repetitious and unpleasant, he also did not show that anything in the content of what they owners said or how they said it was abusive, oppressive, or similar in nature to the types of behavior that EAB has previously held were good cause for a claimant to leave work.<sup>1</sup> On this record, claimant has not met his burden to show that he quit work for a grave reason such that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working for the employer for an additional period of time.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-44731 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

**DATE of Service:** November 6, 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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<sup>1</sup> See *McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to “sacrifice all other than economic objectives and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits); *Beth A. Jackson* (Employment Appeals Board, 13-AB-0502, April 2, 2013) (ongoing unwanted sexual advances and touching despite making complaints); *Brenda A. Kordes* (Employment Appeals Board, 12-AB-3213, January 8, 2013) (ongoing sexual harassment); *Stephen G. Wilkes* (Employment Appeals Board, 12-AB-3173, December 14, 2012) (ongoing verbal abuse despite complaints); *James D. Hayes* (Employment Appeals Board, 11-AB-3647, February 9, 2012) (sexist and ageist remarks); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (supervisor’s ongoing verbal abuse and fits of temper); *Shirley A. Zwahlen* (Employment Appeals Board, 11-AB-2864, December 12, 2011) (management’s ongoing ageist comments and attitudes); *Denisa Swartout* (Employment Appeals Board, 11-AB-3063, October 28, 2011) (corporate culture hostile to women); *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (supervisor’s regular fits of temper and verbal abuse).