

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1271**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 125914). Claimant filed a timely request for hearing. On October 2, 2015, ALJ S. Lee conducted a hearing at which the employer did not appear, and on October 9, 2015 issued Hearing Decision 15-UI-45665, affirming the Department's decision. On October 27, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written arguments on October 27, 2015 and October 28, 2015. Both submissions contained information that was not offered into evidence at the hearing. However, claimant did not explain why she did not present this information during the hearing or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. For this reason, EAB did not consider the new information that claimant sought to present in her written arguments. EAB considered only information received into evidence during the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Confederated Tribes of Siletz employed claimant as an outreach and data specialist from September 16, 2015 until June 12, 2015.

(2) When claimant was hired, her position was funded through a grant that the employer received for a home visiting program in the employer's education programs department. In this position, claimant performed outreach, conducted training for the employer's home visitors, entered data gathered during home visits and sometimes accompanied or "shadowed" the home visitors during their visits to tribal families. It was understood that claimant was not going to be a home visitor, but would support the home visitors only through activities in the office or "shadowing."

(3) Claimant had a poor working relationship with her first supervisor. Claimant thought the supervisor was "verbally and mentally abusive" to her. Audio at ~13:14, ~32:09, ~33:23. In early October 2014,

claimant's first supervisor left her employment with the employer, and claimant did not again have a supervisor until early February 2015.

(4) Sometime before approximately February 2015, the employer's home visiting program became a part of the employer's social services programs department. On February 2, 2015, the employer hired a new person who became claimant's immediate supervisor as well as the supervisor of the home visitors. The newly hired supervisor had been out of the workforce for a long period of time and she was not familiar with an office environment. The new supervisor had no background in the employer's operations and programs and little understanding of the ways of the tribe. Claimant needed to assist the new supervisor in performing most facets of her job. Claimant disliked working without a knowledgeable supervisor who could advise her on performing her job. Claimant concluded that the new supervisor did not have the basic competencies to perform her job duties. Claimant went to the employer's human resources representative to express concerns about the supervisor. The representative told claimant to "give her [the new supervisor] a chance," to "hang in there" and to "just work with it." Audio at ~30:48.

(5) In early June 2015, one of the home visitors in claimant's office left work. On approximately Tuesday, June 9, 2015, claimant's supervisor told claimant that she needed some information because she was going to start performing home visits next week as a result of the home visitor's departure. Claimant inquired whether she would accompany her supervisor to "shadow" her during the home visits. The supervisor told claimant she would not and, "my boss [the program director] told me to tell you that you're going to start doing home visits by yourself on Monday [June 15, 2015], only by yourself, and you're not going with me." Audio at ~15:38. Claimant told her supervisor she was in the middle of assisting in the implementation of a new data entry program, she was not hired as a home visitor and she asked the supervisor to speak with the program director to determine if she was really going to be assigned to perform home visits rather than shadowing them. Claimant's supervisor refused, stating "No, that's it" and "You will start doing home visits by yourself and only by yourself." Audio at ~15:58, ~22:38.

(6) Claimant did not want to work as a home visitor because she did not feel comfortable providing one-on-one instruction to tribal families. Claimant was more comfortable providing program support in an office setting and in monitoring others' implementation of the employer's policies. Claimant also did not think she could handle the significant amount of driving that home visits would require.

(7) Sometime after June 9, 2015, claimant contacted the employer's human resources representative to protest her upcoming assignment to perform home visits and to ask if there was any way she could remain performing data entry and outreach, only. The representative told claimant that she could do nothing on her behalf and claimant was going to start making home visits the next week. When claimant continued to object, the representative told her, "I'm sorry it's not working out." Audio at ~21:52.

(8) On Friday, June 12, 2015, claimant voluntarily left work since she would start making home visits on Monday, June 15, 2015.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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” 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 her employer for an additional period of time.

Claimant identified three reasons for leaving work when she did: the requirement that she perform home visits; her discomfort working since February 2, 2015 with a supervisor who lacked experience and knowledge; and the allegedly abusive manner in which her first supervisor had treated her. Audio at ~14:33, ~16:55, ~23:19, ~28:18, ~31:00, ~32:09, ~33:23. Accepting that claimant’s first supervisor mistreated her, that supervisor left work in early October 2014, approximately eight months before claimant quit. Since any mistreatment presumably stopped when that supervisor departed, it is highly unlikely that it was a proximate cause of claimant’s decision to leave work in June 2015. As well, since the alleged mistreatment was not ongoing as of June 2015, it was not a grave reason for claimant to leave work when she did.

With respect to the inexperience and lack of knowledge of claimant’s new supervisor, it is understandable that it was frustrating and annoying to claimant, and might have left claimant with the feeling that she was not being capably supervised. However, nothing in claimant’s description of the new supervisor’s behavior tends to suggest that it was abusive, personally or professionally harmful, or otherwise beyond the tolerance of a reasonable person. Absent such evidence, claimant did not meet her burden to show that the deficiencies of her new supervisor or the behavior of the supervisor was a grave reason to leave work.

With respect to claimant’s abrupt assignment to home visitor duties, it was obvious from her testimony that she did not think she was well-suited to perform those duties. However, claimant did not identify any significant harm that would likely befall her from trying to master those duties, and none are discernible from her testimony or inferable from the surrounding circumstances. While claimant might have lacked confidence in her ability to perform home visitor duties, a reasonable and prudent person who wanted to remain employed would not have been ruled the position before trying it. Rather, a reasonable and prudent person exercising ordinary common sense, and who also had two years’ experience in shadowing home visits, would not have concluded that she needed to quit work because she was going to start making home visits alone until she at least attempted to do so. Absent additional evidence, claimant did not demonstrate that an assignment to home visits constituted a grave reason to leave work.

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

**DECISION:** Hearing Decision 15-UI-45665 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service: November 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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