

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1291**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81207). Claimant filed a timely request for hearing. On October 20, 2015, ALJ Seideman conducted a hearing, and on October 21, 2015 issued Hearing Decision 15-UI-46242, concluding claimant voluntarily left work with good cause. On November 3, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

On November 18, 2015, the employer submitted new information to EAB that was not offered into evidence at the hearing. Information not received into evidence at the hearing will not be considered on review unless the party offering the information establishes it is relevant and material to EAB's determination, and that factors or circumstances beyond its reasonable control prevented it from offering the information into evidence at hearing. OAR 471-041-0090(2) (October 29, 2006). The employer provided no explanation with the new information, and thus failed to explain its relevance or that factors or circumstances beyond its reasonable control prevented it from offering the information at hearing. For this reason, EAB considered only information received into evidence at hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Side Pocket Tavern employed claimant from May 15, 2013 to August 31, 2015 as an assistant manager and bartender.

(2) Claimant initially worked for the employer from September 13, 2006 to January 29, 2013, when she quit work because of the way the employer's manager treated her. Claimant agreed to return to work on May 15, 2013 based on the owner's assurance that the manager's treatment of claimant would improve. Exhibit 1.

(3) When claimant returned to work for the employer, the manager's behavior toward claimant and other employees remained the same. She often yelled and used foul language toward them in front of other employees and tavern guests. On occasion, the manager would also slam doors and throw things.

(4) Claimant repeatedly complained to the tavern owner about how the manager treated claimant and other employees. The owner either replied that he would speak with the manager about her behavior, or instructed claimant to discuss her complaints directly with the manager. The manager's behavior did not improve.

(5) On June 19, 2015, claimant worked overtime to cover another employee's shift when that employee failed to report to work. Claimant became upset because the manager told her she would not pay claimant for the overtime and gave her a warning for working overtime without the manager's authorization. The incident prompted claimant to give the employer notice that she would quit on June 30, 2015.

(6) From June 21, 2015 to August 9, 2015, the manager was absent from work, visiting her mother in Nevada. The owner asked claimant to perform the manager's duties while the manager was absent, and claimant agreed to continue working for the employer until the manager returned.

(7) On August 10, 2015, claimant asked the owner to meet with the manager and her to try to resolve their complaints about each other. The manager refused to speak to claimant at that time. Claimant continued to report to work until August 26, 2015.

(8) On August 26, 2015, the manager became upset with claimant because claimant had not ordered chips for the tavern. The manager stated to claimant, in front of customers, "This is fucking ridiculous. You must be fucking stupid. I got to do everything myself." Audio Record at 31:23 to 31:31. She then slammed the door as she walked out of the tavern. Claimant immediately told the owner her last day of work would be August 31, 2015.

(9) On August 31, 2015, claimant quit work because the manager yelled and used foul language toward claimant and her coworkers.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude claimant voluntarily left 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" 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 quit work because, for almost nine years, the employer's manager consistently yelled and used foul language toward claimant and other employees, and, on August 26, 2015, called claimant, "fucking stupid," in front of customers. When claimant complained to the owner about how the manager treated her and other employees, and although claimant's manager openly yelled and used foul language toward claimant, the record lacks any evidence that the employer ever reprimanded the manager her for her

conduct or that additional complaints to the employer about the manager's behavior would have improved claimant's working conditions. The record also fails to show claimant had or was aware of any other resource to which she could complain that would not have been as futile as her complaints to the owner. Moreover, when claimant asked the owner to meet with claimant and the manager to resolve the matter of the manager's behavior, the manager refused to speak to claimant. The Oregon Court of Appeals has stated that claimants are not required to "sacrifice all other than economic objectives and \*\*\* endure \*\*\* personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits." *McPherson v. Employment Division*, 285 Or 541, 557, 591 P2d 1381 (1979). Applying *McPherson's* "oppressive situation" standard to the facts of this case, claimant had good cause to quit work because her situation was "oppressive" and she had taken reasonable steps to correct it before abandoning her job. A reasonable and prudent person subjected to what amounted to ongoing verbal abuse by a manager would not continue working an additional period of time for an employer that allowed such abusive conduct to continue. See *Kathryn A. Johnson* (Employment Appeals Board, 11-AB-2272, September 6, 2011) (regular fits of temper and verbal abuse); *Pamela Latham* (Employment Appeals Board, 11-AB-3308, December 22, 2011) (requests that manager cease verbal abuse and fits of temper are futile).

For these reasons, it is more likely than not on this record that a reasonable and prudent person would have no reasonable alternative but to quit work. Thus, claimant quit work for good cause and is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 15-UI-46242 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service: December 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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