

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1476**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 120534). Claimant filed a timely request for hearing. On December 1, 2015, ALJ Murdock conducted a hearing in which the employer did not participate, and on December 4, 2015, issued Hearing Decision 15-UI-48832, affirming the administrative decision. On December 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his 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 his reasonable control prevented him 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) Aspen Lakes Golf Course employed claimant as an operator working the employer's grounds from August 23 through September 14, 2015.

(2) On one occasion during his work for the employer, claimant's supervisor told claimant he needed to keep his shirt tucked in while he was working. Other employees worked with shirts that were not tucked in, and were not required to tuck in their shirts. Audio Recording at 7:19.

(3) On another occasion during his work for the employer, the employer's superintendent saw claimant working on the golf course fairway. Despite his realization that claimant was working on the fairway, the superintendent turned on the sprinklers on the fairway and claimant got wet. Audio Recording at 9:25.

(4) On September 14, 2015, claimant discussed the weed eating work he was expected to perform with his foreman. Claimant told the foreman that he considered the weed eating work to be the hardest part

of his job; the foreman disagreed, asserting that it was not a hard job. Later in the day, the superintendent and assistant superintendent talked with claimant about his work performance and discussion with the foreman. They accused claimant of “bad-mouthing” certain individuals. The assistant superintendent told claimant he should do his job and shut his “fucking mouth.” Audio Recording at 11:25. Claimant had never “bad-mouthed” any of his coworkers. Audio Recording at 6:07.

(5) On September 14, 2015, claimant finished his shift and then quit his job because the employer had verbally abused him.

**CONCLUSION AND REASONS:** We disagree with the ALJ. We conclude that claimant voluntarily left work with 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 quit his job because the employer treated him unfairly. During the three weeks that claimant worked for the employer, he was subjected to three separate instances of mistreatment by the employer. A supervisor singled him out for special treatment by telling him he must tuck in his shirt, a dress code to which other employees were not required to adhere. The employer’s superintendent then deliberately turned on the sprinkler on in an area where he knew claimant was working. Finally, the employer’s assistant superintendent told claimant, for no discernible reason, that claimant needed to shut his “fucking mouth.” A supervisor’s behavior toward an employee may be good cause to leave work if a claimant shows she was subjected to ongoing “oppression” or “abuse” in the workplace. *See, e.g., McPherson v. Employment Division*, 285 OR 541, 557, 591 P2d 1381 (1979) (claimants are 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.”) The three incidents of supervisory mistreatment to which claimant was subjected would have caused a reasonable person to conclude that the work environment was so abusive that the only reasonable alternative was to quit the job.

The ALJ contended, however, that claimant had a reasonable alternative to quitting when he did. According to the ALJ, claimant could have contacted the employer’s owners to complain about the behavior of his supervisors. Claimant testified, however, that the owners had nothing to do with his hiring and no direct involvement in the daily work performed on the employer’s grounds. The record is also devoid of any evidence that claimant had the means, ability or opportunity to contact the owners.

Claimant voluntarily left work with good cause. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-48832 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 7, 2016**

**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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