

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1509**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 71045). Claimant filed a timely request for hearing. On December 10, 2015, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on December 17, 2015 issued Hearing Decision 15-UI-49547, affirming the Department's decision. On December 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant and the employer submitted written argument to EAB. Each party's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the reasonable control prevented that party from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) New Tribe, Inc. employed claimant from October 15, 2001 to October 15, 2015 as its general manager.

(2) Prior to 2012, claimant experienced work stress caused by a coworker, who repeatedly behaved in a hostile manner toward claimant at work. Claimant had an "upsetting experience" with him daily. Audio Record at 11:20 to 11:24. Beginning in 2012, claimant was able to work directly with another employee, a supervisor, rather than having daily contact with the coworker. Claimant avoided the coworker to the extent possible in a small business such as the employer's business, but the incidents continued to occur approximately every two months. The coworker, who was also the owner's boyfriend, would sometimes enter claimant's office, close the door, and yell at claimant in an intimidating manner. Claimant reported each incident to the owner, but the owner blamed claimant or said she could not do anything, and the coworker's behavior did not change.

(3) The last incident involving the coworker occurred in September 2015. Claimant was talking with her supervisor about planning production when the coworker approached claimant, interrupted claimant's conversation with the supervisor, and told claimant, "You don't need to talk about this, and

stay out of it.” Audio Record at 13:33 to 13:39. Claimant felt intimidated and upset by the coworker’s behavior, and reported it to the owner. The owner told claimant she could do nothing about it. The employer had no human resources personnel other than claimant in her role as general manager.

(4) Claimant also experienced ongoing stress from increasingly tense interactions with the owner, who exhibited frequent mood swings and would sometimes yell at and use foul language in talking with claimant at work for no apparent reason. The situation worsened to such an extent that, during the last two months of claimant’s employment, the owner spoke to claimant only through email and would get no closer than ten feet to claimant.

(5) Claimant also experienced ongoing stress due to the employer’s repeated failure to pay claimant and other employees in a timely manner.

(6) The stress from work caused claimant to feel anxious and experience stomach and digestive problems. She discussed the matter with her doctor, who recommended claimant undergo a medical diagnostic procedure that claimant was unable to afford.

(7) On September 28, 2015, the owner discharged the supervisor with whom claimant had been working since 2012. As a result, that employee’s duties shifted to the coworker with whom claimant had problems, and claimant would have to work directly with him. The owner told claimant that she knew claimant would be dissatisfied with the staff change due to her health issues, and that she would understand if claimant chose to leave work due to the change.

(8) Claimant gave the employer notice on October 1, 2015 that she would end work for the employer on October 15, 2015. Claimant quit work on October 15, 2015 due to work stress and its impact on her health.

**CONCLUSIONS AND REASONS:** We disagree with the Department and the ALJ and conclude claimant quit 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.

In Hearing Decision 15-UI-49547, the ALJ concluded claimant quit work without good cause because she did not show she faced a situation so grave that she had no reasonable alternatives but to quit work

when she did.<sup>1</sup> The ALJ reasoned that claimant could have continued to work with the hostile coworker “to see how it worked out” until she secured other work.<sup>2</sup>

We disagree and conclude claimant faced a grave situation because her increasingly stressful working conditions caused her to develop a stomach condition and claimant did not have the financial resources to fully address her health condition. There was no evidence to show that claimant’s working conditions would improve. To the contrary, having to work directly with the contentious coworker would likely result in more frequent stressful interactions, and her relationship with the owner was deteriorating, not improving. Nor was there evidence to show that any measure taken by claimant at work would improve her working conditions or lessen their impact on her health. To the contrary, the record shows claimant complained repeatedly to the owner about the coworker’s behavior, and although the owner acknowledged the problem and its impact on claimant’s health, did not remedy it. There is no reason to conclude claimant’s health would improve by taking time off from work because she would return to the same working conditions that caused her health condition. We thus conclude no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, whose health was affected by her working conditions, would continue working for the employer for an additional period of time under the circumstances claimant described.

Claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 15-UI-49547 is set aside, as outlined above.<sup>3</sup>

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 13, 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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<sup>1</sup> Hearing Decision 15-UI-49547 at 2.

<sup>2</sup> *Id.*

<sup>3</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.