

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0176**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 160159). Claimant filed a timely request for hearing. On January 26, 2016, ALJ Vincent conducted a hearing, and on January 26, 2016 issued Hearing Decision 16-UI-51978, affirming the Department's decision. On February 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** During the hearing, the ALJ identified and admitted two documents into the record as Exhibit 1. The exhibit was not marked, but the ALJ described the documents in sufficient detail that EAB was able as a clerical matter to identify and mark them collectively as Exhibit 1.

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, including Exhibit 1, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Eagle Point Golf Club employed claimant from May 5, 2014 to November 22, 2015 as a server and bartender.

(2) In approximately January 2015, the employer hired a new manager as claimant's supervisor.

(3) Beginning in July 2015, as the employer's golf course became busier, claimant's supervisor began to behave rudely toward claimant and other servers. Claimant and another server complained to the employer's general manager that the supervisor was rude, difficult to work with, and a "bully" toward them. Audio Record at 8:05 to 8:07. The general manager spoke with the supervisor about his behavior.

(4) The supervisor's demeanor toward all the servers, including claimant, improved for a short time. However, the supervisor began to mistreat claimant again. Claimant asked the supervisor why he had

begun to treat her in a rude manner again, and he told claimant that “[he] hated [claimant] because [she] had tried to get him fired,” and that he was “going to make [claimant’s] life miserable.” Audio Record at 9:52 to 10:05. The supervisor spoke negatively about claimant to other servers, cooks and customers, and made claimant nervous by throwing things near her. At times, when claimant was working alone with the supervisor, he would not relieve her from her post to take a break, or use the restroom. Claimant felt embarrassed in front of customers when the supervisor refused to comply with requests from only claimant’s customers if they had special requests for their food orders. The supervisor sometimes sent claimant home while her tables were still open, so she did not receive the tips from those tables despite having been the tables’ server. The supervisor also sat at the bar after his shift ended and stared silently at claimant while she was working, making claimant feel nervous.

(5) Claimant reported the supervisor’s behavior to the general manager two more times. Each time, the general manager spoke with the supervisor, and the supervisor responded by behaving in a more abusive manner toward claimant. Claimant began to keep a journal of the supervisor’s behavior toward her. The general manager told the supervisor that claimant was recording his conduct toward her, and the supervisor’s treatment of her became even worse.

(6) In November 2015, claimant complained to the employer’s human resources department about the supervisor, and it referred her to the employer’s employee hotline. Claimant reported the supervisor’s behavior to the hotline. On November 6, 2015, a vice president for the employer’s management company contacted claimant, discussed what had occurred with the supervisor, and told claimant he would conduct an investigation and report back to claimant in two weeks. The vice president spoke with the supervisor and other employees about claimant’s allegations.

(7) On November 17, 2015, the vice president told claimant that information from the other employees confirmed that the communication between claimant and the supervisor was not “healthy,” and that the supervisor avoided communicating with claimant. Audio Record at 25:24 to 25:31. The vice president told claimant he would provide claimant and the supervisor with counseling to improve their employee relations. Claimant was dissatisfied with the results of her complaint to the hotline because counseling alone had caused the supervisor to retaliate against her in the past.

(8) On November 19, 2015, the vice president spoke with the supervisor about his communication with claimant, and the supervisor said he would “work on that.” Audio Record at 28:01 to 28:04.

(9) On November 22, 2015, claimant’s supervisor told claimant to “give [him] an early Christmas present and quit.” Audio Record at 10:55 to 10:59. Claimant voluntarily left work because the supervisor’s behavior did not improve despite her complaints to the employer.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that 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.

In Hearing Decision 16-UI-51978, the ALJ concluded that claimant's working conditions did not create a grave situation for claimant, and that rather than quitting, she had the reasonable alternative of continuing to complain to the vice president from the employer's management company.<sup>1</sup> We disagree.

At the time claimant left work, she had been subjected to persistent, continuous mistreatment from her supervisor for five months, and although claimant complained to two levels of management and human resources, the employer's actions in response to her complaints did not stop the supervisor's conduct. Claimant's firsthand testimony about the supervisor's conduct, including failing to allow claimant to take restroom breaks, throwing objects around her to startle her, and causing her to lose tips she had earned, was not contradicted by testimony at hearing from the supervisor or other employees present when the incidents occurred. Moreover, that the general manager repeatedly counseled the supervisor shows the general manager was aware of the supervisor's conduct.

Although the employer responded to claimant's complaints by repeatedly counseling the supervisor, the ALJ's conclusion that claimant could have continued to complain to upper management overlooks the fact that each time claimant complained to management, the supervisor's mistreatment escalated as he repeatedly retaliated against claimant for having complained about his conduct. Claimant's uncontroverted testimony was persuasive that the supervisor's behavior toward her was in response to her complaints, where he told her that he hated her because she complained about him, would "make her life miserable," and wished she would quit. No reasonable and prudent person would consider making an additional complaint to management a reasonable alternative under the circumstances.

Claimant voluntarily left work with good cause, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-51978 is set aside, as outlined above.<sup>2</sup>

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, not participating.

**DATE of Service:** March 8, 2016

**NOTE:** 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.

**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

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<sup>1</sup> Hearing Decision 16-UI-51978 at 2.

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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