

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0506**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 80122). On March 21, 2016, claimant filed a timely request for hearing. On March 29, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 7, 2016. On April 7, 2016, ALJ Murdock conducted a hearing, and on April 14, 2016 issued Hearing Decision 16-UI-57295, affirming the Department's decision. On May 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. In her argument, claimant asked EAB to consider information not received into evidence at the hearing. In support of her request, claimant asserted that she did not offer her new information into evidence at the hearing because she "is not fully able to express herself in ways that would have perhaps confirmed her situation better, as she has problems with authority figures," and that the ALJ erred in not allowing her mother, who would have provided the information, to testify at the hearing. OAR 471-041-0090 (October 29, 2006) states that EAB may consider new information when the party offering the information establishes that the new information is relevant and material to EAB's determination, and factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. With respect to the ALJ not allowing claimant's mother to testify at the hearing, OAR 471-040-0025(5) (August 1, 2004) states that erroneous rulings on evidence shall not preclude the ALJ from entering a decision unless shown to have substantially prejudiced the rights of a party.

Claimant's new information regarding the employer's store manager's allegedly abusive behavior toward her, its alleged effect on her, her alleged attempts to resolve the situation, and whether further attempts would have been futile, is relevant to EAB's determination of whether claimant had good cause

to quit working for the employer. However, claimant failed to establish that factors or circumstances beyond her reasonable control prevented her from offering the information into evidence at the hearing. Notice of administrative decision # 80122 found that claimant quit working for the employer because she believed she was being treated unfairly by the store manager, but that she did not complain to the employer's owner. Based on those findings, decision # 80122 reasoned that claimant's dissatisfaction with the way the store manager treated her was not a reason of such gravity that claimant had no reasonable alternative but to quit work, and concluded that claimant therefore quit work without good cause. Claimant had 22 days after notice of decision # 80122 was served, 17 days after she filed her request for a hearing, and 9 days after the notice of hearing was served, to prepare for the hearing. Claimant's assertion that she "has a problem with authority figures" is insufficient to establish that it was beyond her reasonable control to prepare for the hearing and offer all relevant and material information regarding the store manager's behavior toward her, how it affected her, how she attempted to resolve the situation, and whether further attempts would have been futile, through her own testimony or written statements. Thus, to the extent, if any, the ALL erred in not allowing claimant's mother to testify at the hearing, such error did not substantially prejudice claimant's rights, and her request for EAB to consider her new information under OAR 471-041-0090 is denied.

**FINDINGS OF FACT:** (1) McGraths Publick Fish House LLC last employed claimant as a server at its Beaverton, Oregon store from January 15 to November 11, 2015.

(2) Claimant lived in the Portland, Oregon metropolitan area and worked for the employer at its Beaverton, Oregon store. The employer also had stores located in Milwaukie and Salem, Oregon and Vancouver Washington.

(3) Claimant had worked for the employer on and off for five years at three different stores, including approximately one year at the Beaverton store, without any significant issues regarding the store manager's behavior toward her. During the course of her most recent employment, however, the store manager, who had recently been promoted to district manager, sometimes yelled at claimant and other employees, and sometimes did so in front of other employees or customers. On one such occasion, the manager told claimant that if she did not sell more signature salads that he would make sure she wasn't scheduled to work anymore. On another occasion, he sat down with claimant and told her that he did not know why he re-hired her, and that she was "not that much of a rock star" when she worked there before. Audio Record at 10:45. On another occasion, the manager told claimant she was a poor server. During the final incident, which occurred in October 2015, the manager told claimant within earshot of customers that she wasn't working fast enough. Claimant sometimes cried after the manager yelled at her.

(4) Claimant and other employees attributed the manager's behavior to the stress he was experiencing as both a store and district manager. However, she did not complain to the manager about his behavior. The employer's grievance procedures, which were stated in the employee handbook, permitted claimant to complain to the two other managers who worked at the Beaverton store, or to contact the employer's corporate office and complain to its human resources department or the employer's owner. Claimant did not do so. Nor did she request a transfer to another store.

(5) On November 11, 2015, claimant quit work due to the manager's behavior toward her. On December 6, 2015, claimant sent the manager a text message asking to return to work for the employer.

Claimant would have preferred to work for the employer at another store, but was willing to return to work at the Beaverton store.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit working for the employer 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 quit work due to her store manager’s behavior toward her. At hearing, claimant asserted that she was being “harassed” and “verbally abused,” by the store manager. Audio Record at 9:40, 12:45. In support of that assertion, however, claimant only that described only four incidents during her ten month tenure in which the store manager yelled at claimant and/or criticized her work performance in an unprofessional manner. Claimant failed to establish that the store manager’s behavior was so egregious, or its effect on her so severe, that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to quit work, as demonstrated by the fact that claimant was willing to return to work with the same store manager less than one month after she quit.

Nor did claimant make attempts to resolve the situation with the store manager. She did not complain directly to the store manager about his behavior, although she had worked with him before for approximately one year without any significant issues, and attributed the change in his behavior to the stress he was experiencing as both a store and district manager. She did not complain to the two other managers who worked at the Beaverton store, the employer’s human resources department or the employer’s owner, as was permitted by the grievance procedures stated in the employer’s employee handbook. Claimant did not assert she was unaware of the employer’s grievance procedures, and although she asserted complaining to the owner would have been futile, she did not assert the same was true with respect to the employer’s human resources department. Nor does the record otherwise show complaining to the human resources department would have been futile, given the human resources manager’s testimony indicating he would have acted on such a complaint. Audio Record at 27:30.

Claimant also did not request a transfer to another store. At hearing, she testified that she did not make such a request because the nearest store was in Salem, Oregon, and relocating nearer to Salem was not feasible at the time she quit work. Audio Record at 19:35. However, even if we assume it was not feasible for claimant to commute to work in Salem from the Portland Metropolitan area, the employer’s human resources manager testified that the employer also had stores located in Milwaukie, Oregon and Vancouver, Washington. Audio Record at 26:55, 27:10. Claimant herself testified that she had worked for the employer on and off for five years at three different locations, and that when she texted the store manager about returning to work, she was “curious” if there were other options, such as working at

another store. Audio Record at 10:00, 17:30. The record fails to show requesting a transfer before quitting work would have been futile given, given the human resources manager's testimony that the employer would have considered such a request. Audio Record at 27:30.

In sum, claimant failed to show that she had no reasonable alternative but to quit working for the employer when she did, or therefore establish that she quit work with good cause. Claimant is disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 16-UI-57295 is affirmed.

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

**DATE of Service: June 20, 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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