

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0564**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140450). Claimant filed a timely request for hearing. On May 5, 2016, ALJ Seideman conducted a hearing at which the employer did not appear, and on May 9, 2016 issued Hearing Decision 16-UI-59173, affirming the Department’s decision. On May 10, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant’s written argument and the entire hearing record when reaching this decision.

**FINDINGS OF FACT:** (1) Murphy Company employed claimant as a sawyer in a wood mill from June 6, 2013 until March 10, 2016.

(2) On Monday, March 7, 2016, claimant reported for work although he felt ill and had an upset stomach. About an hour into his shift, claimant started to experience episodes of severe, “uncontrollable” diarrhea. Audio at ~7:10. The episodes were not predictable. Claimant soiled himself and liquid from his bowels “was running down [his] legs.” Audio at ~7:13. Claimant went to his supervisor, explained the situation, said he was not able to stop “shitting [his] pants” and asked for permission to leave work. Audio at ~7:39. The supervisor refused to give claimant permission, stating, “Sorry, I can’t afford to lose you.” Audio at ~7:40.

(3) After his supervisor refused to allow him to go home on March 7, 2016, claimant worked the remainder of his shift. During the shift, claimant continued to soil his pants uncontrollably. Claimant was able to smell the odor emanating from the diarrhea. Claimant was uncomfortable, self-conscious and embarrassed. Claimant felt humiliated.

(4) On Tuesday, March 8, 2016, claimant reported for work. At that time, claimant was still experiencing diarrhea, but was able to control it. Upon claimant’s arrival, his supervisor looked at claimant, and began to hold his stomach and groan. The supervisor laughed and asked claimant, “Are

you gonna make it [tonight]?” Audio at ~8:40. The supervisor repeated this parody three more times during claimant’s shift. After the second time, claimant asked the supervisor to leave him alone and told him he did not want to talk about what had happened to him the night before during work. However, the supervisor performed his imitation of claimant one more time that night.

(5) On Wednesday, March 9, 2016, before claimant started his shift, the supervisor parodied claimant’s uncontrollable diarrhea once again. Claimant became angry and upset. About an hour into claimant’s shift, a coworker entered claimant’s work area to perform some cleaning. The coworker told claimant, “Be careful. Don’t bend over too far,” which claimant took as a joke about the need to avoid diarrhea involuntarily leaving claimant’s body. Audio at ~9:41. Later, claimant noticed some other coworkers pointing at him and talking and laughing, which claimant also assumed was about his bout with diarrhea in the workplace. After these occurrences, claimant felt humiliated, “flew off the handle,” was “in tears” and too upset to concentrate on the tasks required to operate the radial saw safely. Audio at ~10:00. Claimant left work early, telling his supervisor, “I don’t know if I’m going to be able to take any more of this.” Audio at ~10:23.

(6) After claimant left work on March 9, 2016, the owner telephoned him at home and asked why he had left work early. Claimant explained his bout of diarrhea, the supervisor’s insistence that he remain at work despite it, and the supervisor’s later imitations of his behavior, and the degree of humiliation he had experienced. The owner arranged to meet with claimant before his shift on March 10, 2016 to discuss the matter further.

(7) On March 10, 2016, claimant again explained what had caused him to leave early on March 9, 2016 and asked if the owner intended to do anything about the way in which the supervisor had treated him during and after his episode of diarrhea. The owner explained to claimant that his supervisor was “old school,” “that’s just the way he does things,” “you need to get over it,” and “that’s the difference between your generation and mine - we’re a lot tougher.” Audio at ~11:58, ~12:37. Claimant then told the owner he felt degraded by the supervisor and the mockery of his workers and was humiliated. The owner continued to state the supervisor was “old school” and that claimant needed to “toughen up.” Audio at ~13:30. Claimant concluded he could not continue to work in a place where the owner allowed him to be degraded, humiliated and made fun of. Claimant told the owner he was quitting.

**CONCLUSIONS AND REASONS:** 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.

In Hearing Decision 16-UI-59173, the ALJ concluded claimant voluntarily left work without good cause. The ALJ reasoned that while claimant was “concerned and upset” with the behavior of the

supervisor and the owner's apparent acceptance of it, he did not show that his situation was grave since he "could have stuck around a while longer to see" if he was able to put the situation behind him or if he would "cool down." Hearing Decision 16-UI-59173 at 3. We disagree.

While it was certainly within claimant's power to remain at work, the issue is whether a reasonable and prudent person of normal sensitivity would have considered the behavior of the supervisor and his coworkers, and the humiliation to which it subjected claimant, a grave reason to leave work. Bowel functions, at least in this country, are done in private and away from the view of others after one is older than a baby. Public defecation is considered taboo even when caused by illness or uncontrollable, involuntary bodily processes. A reasonable and prudent person of normal sensitivity would have considered his supervisor's refusal to let him leave work when he had uncontrollable diarrhea, and effectively requiring him to defecate on himself in the workplace, humiliating, mortifying, shameful and degrading. A reasonable and prudent person would also have considered his supervisor's later mockery of him about his workplace bout of diarrhea and the later behavior of his coworkers equally degrading. After claimant explained the situation to the owner and, rather than taking steps to ameliorate claimant's humiliation and stop the supervisor's mockery, the owner counseled claimant to accept it, it was reasonable for claimant to conclude, as would any reasonable and prudent person, that he needed to leave work to avoid continuation of that humiliation as well as a recurrence of it under future circumstances.

Claimant showed good cause for leaving work when he did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-59173 is set aside, as outlined above.

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

**DATE of Service: June 17, 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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