

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0865**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 163228). Claimant filed a timely request for hearing. On June 30, 2016, ALJ Holmes-Swanson conducted a hearing, and on July 5, 2016, issued Hearing Decision 16-UI-63133, affirming the administrative decision. On July 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) Dental Service employed claimant as a front desk worker from February 22, 2016 until April 8, 2016.

(2) Claimant had no experience working in a dental office when he began working for an employer. He was expected to seek assistance from T and M,<sup>1</sup> senior employees who were knowledgeable and experienced in the employer's procedures. T and M disliked claimant; they regularly spoke to one another in Spanish and used a derogatory term for a gay man when referring to claimant during these conversations. They also regularly called claimant a "stupid white boy." Audio recording at 11:26. T and M made claimant feel stupid when he asked them questions or sought their assistance. At times, he received contradictory instructions from T or M; if he pointed this out, he was accused of lying. Audio recording at 14:18.

(3) Early in March 2016, claimant talked to the manager about the problems he was experiencing with T and M. The manager told claimant that he needed to learn to work together with the two employees and took no other action to address claimant's concerns. Audio recording at 13:05. Claimant also spoke with the assistant manager who had witnessed his interactions with T and M. The manager told claimant that T and M were senior employees to whom claimant needed to be respectful. When claimant asked

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<sup>1</sup> "T" and "M" are pseudonyms.

the assistant manager to provide him with examples of any disrespectful behavior, she was unable to do so. Audio recording at 16:46.

(4) The negative interactions T and M had with claimant increased after claimant spoke with the manager and assistant manager. Because of the workplace stress he was experiencing, claimant began to have difficulties sleeping and lost his appetite. Audio recording at 20:25.

(5) Sometime in late March or early April 2016, the manager to whom claimant had spoken about T and M left the office where claimant worked and was replaced by another manager. On April 5, 2016, spoke with the new manager about the abusive treatment he was experiencing at work. The new manager was sympathetic to claimant's concerns; he told claimant that he had previously worked in claimant's office and had walked out, and that he knew of an employee in claimant's office who quit in January 2016 because he was harassed by other employees. The acting manager agreed there were problematic employees in the office, but told claimant he was uncertain how long it would take to remove these employees. Audio recording at 19:01, 19:22. The acting manager offered claimant a working interview in another one of the employer's offices.

(6) Claimant chose not to accept the working interview and on April 8, 2016, and voluntarily left work. Claimant quit his job because of the abusive behavior he was experiencing in the workplace.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that claimant voluntarily left work without 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.

The record shows that claimant experienced a workplace environment in which two of his coworkers treated with hostility: they used a derogatory term to refer to him when they talked in Spanish, they called him a "stupid white boy," and they accused him of lying when he questioned contradictory advice they had given him. The manager and assistant manager refused to take any action against claimant's coworkers, telling claimant that he should try to get along with T and M, and treat them with respect. We find that claimant presented sufficient evidence to establish that his coworker's behavior toward him created an oppressive or abusive work environment, which constituted a grave situation. See *McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (to show good cause for leaving employment, claimants 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).

We agree with the ALJ, however, that claimant had a reasonable alternative to leaving work when he did – he could have accepted the employer’s offer of a working interview at another one of the employer’s offices. In his written argument, claimant explained that he chose not to participate in the working interview because “[r]egardless of location, the employer was still the same entity, actively retaining and promoting individuals such as [T, M, and the assistant manager], while my acknowledged claims went unaddressed, uninvestigated and ignored.” Contrary to claimant’s assertion, however, it appears that the employer had begun to address claimant’s concerns at the time he quit. The manager who refused to take any action on claimant’s complaints had left, replaced by a new manager who was sympathetic to claimant’s concerns, and who indicated a willingness to take some action in regard to the employees who were harassing claimant.<sup>2</sup> Had he accepted the new manager’s offer of a working interview, claimant would have had the opportunity to determine whether the employer had a harassment-free office in which he could more comfortably work. If the claimant found that the new office not an appropriate environment for him, or the new office found that claimant was not an appropriate employee for it, claimant could have quit his job at that time. A reasonable and prudent person, exercising ordinary common sense, would have least attempted to find a better workplace situation before deciding to voluntarily leave work.

Claimant voluntarily left work without good cause. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 16-UI-63133 is affirmed.

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

**DATE of Service:** August 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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<sup>2</sup> We note that claimant gave the new manager virtually no time to investigate his situation and address his complaints. Claimant first spoke with the new manager about the problems he was experiencing on April 5, and chose to reject the offer of a working interview and quit his job on April 8. Audio recording at 24:31, 25:08.