

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0989**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103237). The decision was sent to the employer via a CPA's address in Coos Bay, Oregon. The CPA's address was the employer's address of record. Claimant filed a timely request for hearing. On July 29, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 11, 2016 to the employer at his address of record. On August 11, 2016, ALJ Menegat conducted a hearing at which the employer failed to appear and issued Hearing Decision 16-UI-65471, concluding that claimant voluntarily left work with good cause. The decision was sent to the employer at his address of record. On August 29, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

On August 29, 2016, the employer submitted written argument to EAB about the employer's failure to appear at the hearing and claimant's work separation. This letter is considered a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party presenting the information shows that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. In support of its request, the employer stated only, "We did not receive notice of the hearing until after August 12, 2016. The hearing was held on August 11, 2016. We believe the Findings of Fact section is erroneous." Employer's August 29, 2016 Letter.

OAR 471-040-0015(1)(August 1, 2004) requires that notice of a hearing be mailed at least five days in advance of the hearing "to parties or their authorized agents at their last known address as shown by the record of the [Department]." The record shows that OAH sent the employer notice of the August 11 hearing 13 days in advance of the hearing at the employer's last known address as shown by the Department's records. The employer contends it received the notice, but not until after the hearing. The employer offers no additional details, such as problems it may have experienced with mail delivery or processing, to support or explain its claim that it did not receive notice of the hearing before the hearing. Without supporting details, we have insufficient basis for concluding that the employer's failure to

receive timely notice of the hearing was a circumstance beyond its reasonable control. The employer's request to present new evidence to EAB is, therefore, denied.

**FINDINGS OF FACT:** (1) Michael McIntyre employed claimant from October 1, 2014 to May 26, 2016 as his in-home caregiver and household assistant.

(2) Throughout claimant's employment, Mrs. McIntyre, the employer's wife, had sudden angry outbursts towards claimant. Claimant felt apprehensive at work because she did not know when an outburst would occur, or what might cause an outburst.

(3) On one occasion, when claimant picked up the newspaper on the way into Mr. McIntyre's house, Mrs. McIntyre grabbed the newspaper from claimant, threw it back into the yard, and yelled at claimant that she must never touch the newspaper.

(4) On another occasion, when claimant arrived at Mr. McIntyre's house, Mrs. McIntyre was yelling because she had been looking for a disinfectant and was unable to find it. Claimant began looking for the disinfectant under a sink and Mrs. McIntyre began taking items out from under the sink and throwing them while yelling that nobody puts anything away.

(5) On one occasion, Mrs. McIntyre walked through the house yelling at claimant and telling her how much various items of furniture cost, and insisted that claimant had nicked some wood on a cabinet when she moved a chair. Claimant told Mrs. McIntyre that she had never moved the chair. Mrs. McIntyre yelled until claimant knelt down to look for the piece of wood in the carpet so Mrs. McIntyre could have the cabinet repaired.

(6) On another occasion, claimant arrived to work 15 minutes early. Mrs. McIntyre came to the door and yelled at claimant, "Don't you ever come early again! When I say 1:00, you be here at 1:00!" Audio Record at 14:26 to 14:32. Later, claimant answered the door when a delivery arrived. Mrs. McIntyre saw claimant looking at the address on the package and yelled at claimant, stating she should not look at the boxes that arrived there.

(7) On May 26, 2016, Mrs. McIntyre became upset when claimant was assisting Mr. McIntyre with a knot in the drawstring of his shorts. Claimant set aside the shorts and planned to undo the knot in the shorts after she assisted Mr. McIntyre with different clothing and got him settled. Mrs. McIntyre "grabbed" a pair of scissors and told claimant, "Give me those shorts." Audio Record at 10:15 to 10:19. Claimant told Mrs. McIntyre that they could fix the shorts after they finished assisting Mr. McIntyre. Mrs. McIntyre began to "scream" at claimant, "This is my house! Nobody tells me what to do in my house! You don't tell me what to do in my house. This is my house. You forget I'm the employer; you're my employee." Audio Record at 10:25 to 10:41. Claimant felt scared by the "look on [Mrs. McIntyre's] face," and believed her outbursts were "escalating" and becoming "more and more irate" over time. Audio Record at 16:49 to 16:55, 15:18 to 15:54. Claimant told Mrs. McIntyre she could no longer work for her, walked to another room, and wrote down her hours. Claimant had difficulty writing her hours before she left work because her hands were shaking.

**CONCLUSION AND REASONS:** We agree 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). A claimant is not, however, required to “sacrifice all other than economic objectives and \*\*\* endure \*\*\* personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits.” *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979). 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 her job because of ongoing mistreatment by her employer’s wife while she worked in her employer’s home. The unpredictable, harsh and arbitrary treatment claimant experienced from Mrs. McIntyre on the job created an oppressive work environment for claimant and constituted a grave situation. As claimant asserted at hearing, she “couldn’t take it anymore . . . [and] never knew what would set [Mrs. McIntyre] off.” Audio Record at 16:00 to 16:05. Claimant worked in a one-on-one atmosphere, in her employer’s home, and did not have the alternative of complaining to anyone other than her employer or Mrs. McIntyre. The record does not show that claimant’s employer would have been able to change Mrs. McIntyre’s behavior, or that Mrs. McIntyre would have responded positively if claimant had complained. Moreover, because a variety of circumstances caused Mrs. McIntyre to have an “outburst,” claimant could not predict when an outburst would occur or change her own behavior to avoid further outbursts. A claimant is not required to pursue alternatives to quitting a job that are futile. *See, e.g., Early v. Employment Department*, 274 Or App 321, 328 (2015) (claimant was not obligated to request additional conflict resolution services before voluntarily leaving work when past use of conflict resolution services did not improve claimant’s working conditions). For these reasons, it is more likely than not on this record that a reasonable and prudent person would have no reasonable alternative but to quit work.

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 16-UI-65471 is affirmed.

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

**DATE of Service:** September 26, 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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