

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1092**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130200). Claimant filed a timely request for hearing. On September 1, 2016, ALJ Wyatt conducted a hearing, and on September 9, 2016 issued Hearing Decision 16-UI-67233, affirming the Department's decision. On September 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he contended that he would have subpoenaed his former coworkers to testify on his behalf at the hearing had he known that the owner would deny making some unflattering references to claimant and, on occasion, yelling at him. However, since the ALJ found as fact that the owner "yelled" and referred claimant as "stupid" or in "similar terms," he did not accept the owner's testimony as accurate. Hearing Decision 16-UI-67233 at 2. Like the ALJ, in this decision, we have accepted claimant's testimony as accurate, yet have still concluded that claimant failed to show the environment in which he worked was hostile or was good cause for him to leave work. Had claimant subpoenaed witnesses who would have testified similarly to him at the hearing, the result of this decision would not be different.

**FINDINGS OF FACT:** (1) Action Auto Glass employed claimant from July 1, 2014 until July 15, 2016, last as an installer and back up shop manager.

(2) The employer was a small auto glass shop that had five employees in addition to claimant. The owner regularly worked at the shop and oversaw employees' work performances. The owner had worked hard to build the employer's business and establish its large clientele. The owner was proud of the employer's glass installation work and was vigilant in maintaining its quality. When the owner saw some inferior work, he occasionally raised his voice, yelled and said something like, "I cannot believe that just happened. We're better than this. We should know better." Audio at ~34:03. Sometimes, when the owner became frustrated, he referred to employees who had performed inferior work as "stupid" or "retards" because there was little innovation in the field of auto glass, the employees had learned long ago how to perform the work and he was upset that they had been careless in their work

performance. Audio at ~10:02, ~19:04. Sometimes if an employee was unwilling to perform a task, the owner referred to that employee as a “pussy.” Audio at ~10:02, ~19:04. The owner spoke to all employees like this, including claimant. The owner did not use foul language in the workplace. Claimant never told the owner he thought his language or his communications were offensive.

(3) Sometime before July 15, 2015, claimant told the owner he had scheduled a medical appointment on July 15, 2015. The owner wrote on claimant’s name on July 15, 2015 in a calendar he kept and followed it with “Dr. 5:00 Herpes Follow-up.” Audio at ~5:43. The entry did not accurately describe the purpose of claimant’s medical appointment. The owner thought the entry was humorous. The owner kept the calendar behind his desk in his office, which would only have been seen by individuals who came into his office.

(4) Starting sometime around approximately January or February 2016, claimant was not allowed to drive the employer’s work vehicles anymore since he had too many accidents and the employer’s auto insurance premiums would be too expensive if he remained insured under the employer’s policy. At this time, claimant began to work in the shop, where came into close proximity with the owner.

(5) On July 15, 2016, claimant was working in the shop when the owner criticized him in front of other employees because of the way he had scheduled a pick-up from a customer. Later, on July 15, 2016, the owner asked claimant to answer the phones since the owner was going to participate in authorization calls and he did not want to be interrupted. Claimant agreed to answer the phones. Shortly afterward, the owner became aware claimant was not answering the phones as he had agreed. The owner went out into the shop to investigate and he could not locate claimant. The owner saw claimant’s work phone and work keys placed out on a counter. Claimant did not tell the owner that he was leaving work, and never told the owner that he considered his language, communication style, or his attempts at humor offensive, hostile or the like. On July 15, 2016, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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.

Claimant cited the owner’s occasional yelling, his occasional use of uncomplimentary references, and his calendar notation about a “herpes follow-up” from a year prior as giving rise to claimant’s decision to quit work on July 15, 2016. While the language the owner may have used was not a model of polite discourse, nothing in the record shows that it was intended to be personally insulting or that claimant or any other employees construed it as involving a personal slur. Claimant also did not express similar hurtful emotions about the reference to his supposed follow-up for herpes recorded in the owner’s calendar. Although the owner may have become animated and raised his voice or yelled on occasion,

the record suggests this was often the result of his frustration over work of inferior quality, of limited duration and was not intended to and was not perceived as inflicting personal abuse. The record, as it stands, does not support that the owner engaged in fits of temper, issued tirades, or did anything that likely would create a work environment perceived as oppressive by a reasonable person of ordinary sensibilities, like claimant. As claimant described the owner's behavior on July 15, 2016, it involved a minor rebuke to him about an error in scheduling a pick-up, which viewed alone and against the back drop that claimant described would not have been considered by a reasonable and prudent person as a grave reason to leave work. Audio at ~12:25.

The owner testified with apparent sincerity about his reliance on claimant and claimant's work ethic in the workplace and the personal and professional regard in which he held claimant. The owner admitted he entered "herpes follow-up" in his calendar as a joke, did not deny he might have referred to employees as "stupid" or "retards" in comments to them, but did deny he ever called claimant a "pussy" because "that's not the way he is." Audio at ~34:28. The owner's testimony appeared reliable, including his apology to claimant at the hearing for having made the "herpes" comment and his comment that "the differences between us [the owner and claimant], we could have worked out in a discussion. Audio at ~25:52. Claimant and the owner agreed that claimant never brought up any of the stated reasons that claimant ultimately contended underlay his decision to leave work and did not give the owner an opportunity to correct them. On this record, a reasonable and prudent person who disliked the aspects of the owner's behavior that claimant did would not have concluded he needed to leave work until he had complained to the owner about the behavior he found objectionable and determined that the owner was not going to change it. Because claimant did not pursue this reasonable alternative, he did not show good cause for leaving work when he did.

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

**DECISION:** Hearing Decision 16-UI-67233 is affirmed.

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

**DATE of Service: October 21, 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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