

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0306-R**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121941). Claimant filed a timely request for hearing. On February 27, 2017, ALJ Lohr conducted a hearing at which the employer did not appear and issued Hearing Decision 17-UI-77800, affirming the Department's decision. On March 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

On March 15, 2017, EAB issued Employment Appeals Board Decision 2017-EAB-0306, reversing Hearing Decision 17-UI-77800 as unsupported by a complete record, and remanding the matter for such other and further proceedings as may be necessary. On April 3, 2017, the Office of Administrative Hearings submitted a complete hearing record. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**FINDINGS OF FACT:** (1) Port of Call Bistro and Bar LLC employed claimant, last as general manager of both the bistro and the employer's events center, from July 2014 to November 7, 2016.

(2) When claimant agreed to become general manager on August 22, 2016, her duties were increased to include managing both aspects of the employer's business and acquiring clients for the events center. It was agreed by claimant and the two owners that she would work 60 to 65 hours per week, maximum, which included being at the business 7 days per week. However, her hours immediately ranged from 75 to 80 hours per week. Between August 22 and the end of her employment, claimant had a total of 4 days off. During that span of time, claimant had several conversations with the owners telling them her hours were excessive and they needed to add staff to provide her with some relief.

(3) On October 30, 2016, one of the owners met with claimant to inform her that it had been decided to reduce the bistro's operation from seven to four days per week. However, the owner advised claimant that he expected her to be at the establishment seven days per week, performing weekly food inventory, organizing events and answering the telephone on days the establishment was closed. Claimant objected

to being at the employer's establishment seven days per week and offered to perform some of her responsibilities from home on two of the days the establishment was closed. However, the owner rejected her proposal after acknowledging "[they knew she was] working too hard [and] were worried about [her] burning out." Audio Record ~ 11:15 to 11:40.

(4) On October 31, 2016, claimant gave the employer notice that she was quitting, effective November 7, 2016, due to "excessive work hours" which included requiring her to be physically present at the employer's establishment seven days per week.

**CONCLUSIONS AND REASONS:** We disagree with the Department and ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 the employer for an additional period of time.

In Hearing Decision 17-UI-77800, after finding that the employer expected claimant to be at its establishment answering phones and organizing events even on the days it was closed, the ALJ concluded claimant did not show good cause for leaving work when she did, reasoning that a reasonable employee would have both attempted the employer's new work schedule and "fully expressed her concerns" about her excessive work hours to the employer before deciding to quit. Hearing Decision 17-UI-77800 at 2. We disagree.

First, the record shows that, prior to the October 30 change in her hours, claimant had "several conversations" with the owners objecting to her work hours; during at least one of these conversations, one of the owners acknowledged that her work hours were excessive. Audio Record ~ 14:20 to 14:50. Viewed objectively, claimant had "fully expressed her concerns" about her demanding work schedule, to no avail, and doing so again probably would have been futile. Second, attempting the new work schedule before giving notice of her intention to quit, more likely than not, also would have been futile, because the employer's unreasonable expectation that she work seven days each week had been attempted and proven to be unworkable for claimant as well as contrary to the parties express agreement that claimant would not be expected to work more than 60 to 65 hour per week.

Claimant demonstrated that the employer's expectation that she work seven days each week was patently unreasonable and that no reasonable and prudent manager in claimant's circumstances would have continued to work for the employer under those unreasonable conditions for an additional period of time. Accordingly, claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

**DECISION:** Hearing Decision 17-UI-77800 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service:** April 24, 2017

**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>1</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.