

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0849**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142157). Claimant filed a timely request for hearing. On July 6, 2017, ALJ S. Lee conducted a hearing, at which the employer failed to appear, and on July 14, 2017 issued Hearing Decision 17-UI-88064, affirming the Department's decision. On July 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Red Rooster Cafe, Inc. employed claimant from March 2016 to March 29, 2017 as a prep cook and dishwasher.

(2) The employer was owned by a managing owner and the managing owner's mother, who did not take an active role in operating the business.

(3) The owner often yelled at claimant if there was a problem in the cafe, regardless of who had caused the problem.

(4) On March 27, 2017, one of claimant's coworkers failed to turn off the water in the men's bathroom while he was working. As a result, the water flooded the men's bathroom and caused the employer to have to close the cafe for two days. The coworker also failed to complete all his or her cleaning duties that day.

(5) Claimant reported to work early for her shift on March 29, 2017. The owner was upset because the cleaning had not been completed and the cafe was in poor condition due to the flooding. The owner began to yell at claimant. Claimant told the owner she had not caused the problems that day. The owner continued to yell at claimant and approached claimant and "got right up into [claimant's] face," and yelled at claimant that she was responsible. Audio Record at 7:28 to 7:36. Claimant told the owner she could not handle having the owner right in her face. The owner continued to yell and bumped into claimant and blocked claimant to prevent her from leaving the office. Claimant told the owner to stop. The owner kept yelling at claimant. Claimant was shaking. Claimant told the owner that she quit.

(6) On March 29, 2017, claimant quit because the owner yelled at claimant, threatened her by “getting up into claimant’s face,” and bumped and blocked claimant from leaving the office, causing claimant to feel ill.

(7) After the March 29, 2017 incident, claimant did not feel well. She was concerned because she felt pressure in her head. Claimant was not able to get a doctor’s appointment for two weeks. When she saw her doctor, the doctor diagnosed her with high blood pressure.

**CONCLUSION AND REASONS:** We disagree 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 the employer for an additional period of time.

Claimant voluntarily left work after the owner became upset and yelled continuously at claimant, despite claimant’s repeated requests that she stop, and became physically aggressive by bumping claimant and blocking her from leaving. In Hearing Decision 17-UI-88064, the ALJ concluded that although the owner’s behavior was inappropriate, the March 29 incident did not cause an immediately grave situation for claimant because employees must sometimes work with owners who are demanding and speak to employees in a manner that the employees do not appreciate.<sup>1</sup> We disagree and conclude that claimant reasonably felt fearful from the owner’s conduct as evidenced by her physical reactions including shaking and pressure in her head, and we conclude that the owner’s conduct on March 29 created a grave situation for claimant because it was an escalation of the owner’s prior pattern of yelling at claimant to what was, perhaps, criminal conduct.

The ALJ also concluded that claimant had the reasonable alternative of speaking to the other owner, the managing owner’s mother, about the treatment she received and that claimant did not establish that it would have been futile to do so.<sup>2</sup> We disagree because the record shows the other owner did not participate in the operation of the business. Moreover, because the other owner was the offending owner’s parent, there is no reason to presume she would or could improve the owner’s volatile behavior. We conclude that enduring a potentially unsafe and unhealthy situation at work while waiting for a resolution was not a reasonable alternative for claimant, especially considering her high blood pressure.

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<sup>1</sup> Hearing Decision 17-UI-88064 at 2.

<sup>2</sup> *Id.* at 3.

We therefore conclude that a reasonable and prudent person, who experienced the type of grave incident that claimant experienced on March 29 would conclude she had no alternative but to voluntarily leave work.

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

**DECISION:** Hearing Decision 17-UI-88064 is set aside, as outlined above.<sup>3</sup>

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

**DATE of Service:** August 14, 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>3</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.