

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0995**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 29, 2017 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 151436). Claimant filed a timely request for hearing. On August 9, 2017, ALJ Frank conducted a hearing, and on August 11, 2017 issued Hearing Decision 17-UI-90205, affirming the Department's decision. On August 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that included information not contained in the hearing record. Claimant did not explain why she was unable to offer this information during the hearing or otherwise show that she was prevented from doing so by factors or circumstances beyond her reasonable control. For this reason, EAB did not consider the new information that claimant attempted to present by way of her written argument. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

**FINDINGS OF FACT:** (1) Heartland Automotive / Jiffy Lube employed claimant as an assistant manager from approximately May 28 or 29, 2017 until June 6, 2017.

(2) Shortly after claimant was hired, claimant's supervisor commented to her that she was not "competent or capable" and was not "suitable" to perform the job of assistant manager. Audio at ~9:28. Claimant interpreted the supervisor's comments as a form of gender disparagement because claimant was female. In response, claimant told her supervisor that she had a mechanic's certification and was qualified for her job. The supervisor then became angry at claimant, raised his voice and said that "he was gonna have his spouse come in [to the workplace] to kick [claimant's] ass." Audio at 9:55. Claimant's supervisor also previously had made disparaging comments about the employer's general manager, who was also female.

(3) After the interaction between claimant and her supervisor, claimant told the general manager that she was resigning her position due to the supervisor's comments. The general manager told claimant that she knew about the comments claimant's supervisor had made to claimant and had already issued a disciplinary warning to claimant's supervisor for those disparaging comments. The general manager

asked claimant to continue working, stating “We’re gonna try to work this out.” Audio at ~10:00. Claimant withdrew her resignation.

(4) In the very few days that claimant was employed, claimant’s supervisor also commented to claimant that “we do things here our way and not the Jiffy Lube way.” Audio at ~15:11. Specifically, the supervisor did not assign teams to perform work as the employer’s policies specified, with the result that the supervisor performed some tasks that should have been performed by claimant or other team members. Audio at ~21:10. Claimant objected to the supervisor sometimes performing her tasks. Claimant complained to the employer’s general manager about the supervisor’s deviation from policy. The general manager “shrugged it off” and did not take action, stating it was sufficient that claimant’s supervisor complied with the employer’s policies “when the big dogs come [to the workplace].” Audio at ~22:50.

(5) On June 6, 2017, claimant clocked in to work at 9:00 a.m. Very shortly afterward, claimant’s supervisor mentioned that she might be sent home early that day because of a lack of business. Claimant thought the supervisor should have waited before letting her know she might need to go home early.

(6) On June 6, 2017, claimant voluntarily left work. The general manager who had previously disciplined claimant’s supervisor was not at work that day, and claimant did not wait to speak with her before deciding to quit work. Claimant quit work because it was unpleasant for her to work with her supervisor.

(7) Sometime after claimant left work, she had her blood pressure measured by her physician and it was elevated. Claimant thought her blood pressure was elevated in reaction to dealing with her supervisor.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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). 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.

While the standard for showing good cause to leave work is modified for a claimant who has a permanent or long-term impairment as defined at 29 CFR §1630.2(h), claimant did not show that the modified standard was applicable to her. OAR 471-030-0038(4). Although claimant mentioned that she discovered her blood pressure was elevated after she quit work, she did not present any evidence on the period of time she had experienced high blood pressure or whether it was long-term or permanent. Similarly, claimant mentioned once in her testimony that she was “anxious” at work, but it was only a passing comment, without detail. There was no indication that this anxiety was serious, that it was a diagnosed condition, or how long it had been affecting claimant and whether it was a long-term or

permanent condition. Audio at ~19:15. On this record, there is insufficient evidence to apply the modified standard for showing good cause that is applicable to claimants with long-term or permanent impairments.

At hearing, claimant testified that she would not have quit work when she did if her supervisor had been discharged or demoted as punishment for the gender-based and angry comments he made to her. Audio at ~17:00. However, claimant did not cite any angry or disparaging comments that the supervisor made after he was disciplined by the general manager, and we therefore infer that his offensive characterizations of claimant's abilities and his threats directed at her had ceased. With respect to the supervisor's statements that he was going to deviate from the employer's policies, claimant did not assert, let alone show, that any appreciable personal or professional harm accrued to her from any such actual or threatened deviations. As well, claimant did not show that the comment her supervisor made on June 6, 2017 about sending her home early if there was not sufficient business to justify having her work her full scheduled shift was anything more than an attempt to inform her in advance of a neutral business decision that might be made about staffing, or how making that statement created a grave circumstance for claimant. On this record, claimant did not show that any of the reasons she cited for leaving work constituted grave reasons as of the time she decided to leave work.

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

**DECISION:** Hearing Decision 17-UI-90205 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service: September 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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