

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1088**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152005). Claimant filed a timely request for hearing. On August 22, 2017, ALJ Shoemake conducted a hearing, and on August 25, 2017, issued Hearing Decision 17-UI-91241, affirming the Department's decision. On September 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Market Fruit Inc. employed claimant from 2005 to June 29, 2017. The employer was an orchard and farmer's market business.

(2) Prior to 2017, many employees, including claimant, often reported for work prior to their scheduled shift and stayed after their scheduled shift was over. The employer considered this a problem so in 2017, it updated its employee manual to prohibit employees from reporting for work more than 5 minutes prior to their scheduled shift. The employer also created an online application to be used to access employee schedules and clock in and out. Each employee acknowledged and signed the updated manual in early 2017. Claimant did not have personal access to the internet so the employer allowed her to use the employer's computer system in their building 24/7. Despite that accommodation, claimant continued to occasionally report for work more than five minutes prior to her scheduled shift, and the employer's owner often spoke to her about it and became increasingly frustrated with claimant.

(3) On June 28, 2017, claimant believed her shift started at 6:00 a.m. when it was scheduled to start at 6:30 a.m. When the owner saw her working at 6:15, she asked claimant why she had started early and claimant responded that her shift started at 6:00 a.m. The owner again became frustrated with claimant, showed her the online schedule that showed claimant was to start at 6:30, and decided to send claimant home to convince her of the importance of checking the online schedule as required. Claimant became upset at being sent home without working.

(4) Later that day, claimant contacted the Oregon Bureau of Labor and Industries (BOLI) and in discussing her situation with a representative, understood from her conversation that she should have

received overtime pay in the past when working more than 40 hours in a week, which she had often done. However, based on information from her accountant, the owner believed that the company's employees were not entitled to overtime because they were farm employees. Consequently, the employer had not paid overtime wages.

(5) On June 29, 2017, when claimant reported for work, she told the owner that she was quitting. She stated, "I just can't do this anymore" and requested her paycheck. Audio Record ~ 11:15 to 11:45. She did not discuss what she believed was the employer's intentional failure to pay overtime wages in the past, which is the reason she quit.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person in her circumstances would have continued to work for the employer for an additional period of time.

Claimant quit work because she believed the employer was unlawfully failing to pay her overtime wages when she worked over 40 hours per week. Before quitting work, however, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense would have informed the owner that a BOLI representative told her the employer was required to pay her overtime, and allowed the employer an opportunity to investigate the matter and resolve it to her satisfaction. The record fails to show that informing the owner would have been futile, given that the employer's owner believed in good faith, based on information from her accountant, that the employer was not required to pay claimant overtime, and the employer therefore was not knowingly violating the law.

Claimant therefore failed to show that she had no reasonable alternative but to quit work. She therefore failed to establish that she quit work with good cause, and is disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 17-UI-91241 is affirmed.

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

**DATE of Service:** October 11, 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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