

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1194**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152610). Claimant filed a timely request for hearing. On September 28, 2017, ALJ Murdock conducted a hearing, and on October 2, 2017 issued Hearing Decision 17-UI-93663, affirming the Department's decision. On October 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Opportunity Foundation employed claimant as a direct support professional from June 13, 2017 until claimant quit work on July 3, 2017.

(2) Claimant's job duties included providing support to adults and children with intellectual and developmental disabilities, including transporting clients into the community to participate in activities.

(3) On July 3, 2017, claimant was caring for an adult client and claimant's lead told claimant to take the client to walk on a track to train for Special Olympics. Claimant refused because it was hot and sunny outside, and claimant has an eye condition and a history of skin cancer and did not go out in the sun without eye and skin protection. Claimant did not have eye and skin protection with her at work on July 3.

(4) At 2:20 p.m. on July 3, 2017, claimant called the team coordinator to explain why she refused to take the client to the track that morning. The coordinator asked claimant if she would complete the rest of her shift, and claimant agreed she would do so.

(5) The residential director called claimant. Claimant asked the director if she could be assigned to work at a different house to avoid working outdoors with the client in the future. The director told claimant, "We don't usually reward people for abandoning their shift," and "you'll do the same thing there." Audio Record at 12:32 to 12:39, 14:35 to 14:38. Claimant was upset by the director's tone and remarks

because claimant had agreed to finish her shift. Claimant quit at that time because of the director's comments.

(6) Claimant did not complain to the employer about the director's treatment of her before she quit, but sent human resources a letter complaining about the director's conduct on July 4, 2017. Human resources generally responds to employees' complaints.

**CONCLUSION 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.

Claimant left work immediately when her director made statements to claimant that she considered to be "inappropriate," "abusive," and "accusatory" in tone and content. Audio Record at 5:20 to 5:45. Claimant was upset when the director's comments referred to claimant "abandoning [her] shift" on July 3 when claimant had agreed to complete her shift. However, although the director's comments were rude and apparently based on a misunderstanding regarding claimant's willingness to complete her shift, in order to constitute good cause, mistreatment from a supervisor must be substantial by the standard of a reasonable person. Two rude comments without foul language or threat or content of an egregious nature, are not sufficient. The behavior that claimant described, while it may have upset claimant, was not so egregious that it would cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to conclude that she had no reasonable alternative but to quit her job.

Nor did claimant make any attempt to resolve the situation with the director. Claimant did not complain about the director's conduct to human resources until after she quit. Had claimant done so, human resources would have addressed claimant's complaint. Claimant had the reasonable alternative of making some effort to resolve the problem she had with the director, and did not show that such effort would be futile.

Claimant failed to demonstrate that she faced a grave situation that left her no reasonable alternative but to leave work. She therefore did not establish that she had good cause to quit her job, and is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 17-UI-93663 is affirmed.

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

**DATE of Service:** November 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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