

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1405**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91448). Claimant filed a timely request for hearing. On November 29, 2017, ALJ Amesbury conducted a hearing, and on December 1, 2017 issued Hearing Decision 17-UI-98002, reversing the Department's decision. On December 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

Both claimant and the employer submitted written arguments to EAB that included information not offered into evidence during the hearing. Under OAR 471-041-0090(2) (October 29, 2006), EAB may consider new information if the party presenting the information shows that circumstances beyond its reasonable control prevented the party from offering the information at the hearing. Neither the employer nor claimant explained why they did not present this information at the hearing or otherwise show that factors or circumstances beyond their reasonable control prevented them from doing so. For this reason, EAB did not consider the new information included in either party's written argument. EAB considered only information received into the hearing record when reaching this decision.

**FINDINGS OF FACT:** (1) Dungarvin Oregon, LLC employed claimant as a program director from July 2016 until September 1, 2017.

(2) During claimant's employment until June 2017, claimant was involved in an intimate domestic relationship with a partner. Claimant's partner exercised financial, emotional and physical control over claimant. Except for allowing claimant \$10 per week, the partner controlled their finances and made claimant financially dependent on her. In their relationship, the partner abused claimant verbally, emotionally and physically and intimidated her. Sometimes, the partner physically attacked claimant.

(3) Sometime in June 2017, the employer hired claimant's partner as one of its program directors. Shortly after, sometime before July 2017, claimant ended her relationship with the partner. As a result of ending the relationship, claimant became very concerned about her emotional well-being and physical safety because of the partner's presence in the workplace and the likelihood of future contact.

(4) On July 11, 2017, claimant sent an email to her supervisor notifying the supervisor that she was not going to return to the workplace and asking that her final paycheck be mailed to her rather than directly deposited into the partner's bank account. Exhibit 1 at 3. Claimant's supervisor sent an email to claimant in reply asking claimant if she was sure she wanted to quit and offering to discuss the situation with her. On July 13, 2017, claimant and the supervisor had a conversation about what had led to claimant's resignation. Claimant disclosed the abuse to which she had been subject in her relationship with the partner and her concerns that she would be subjected to further abuse as a result of the presence of the ex-partner in the workplace if claimant continued to work. The supervisor told claimant that she "understood." Transcript at 13. The supervisor urged claimant to return to work at least for the traditional 14 day notice period. The supervisor told claimant that she would make arrangements to ensure claimant's safety in the workplace during the notice period by keeping the ex-partner physically separated from claimant. Claimant agreed to return to the workplace until July 28, 2017, at which time she would leave work. Claimant returned to work on July 17, 2017.

(5) Sometime before July 28, 2017, claimant's supervisor asked claimant to extend her time at work beyond July 28, 2017 until either the employer had hired a replacement for claimant or decided to let go claimant's ex-partner in order to continue an employment relationship with claimant. Claimant agreed to do so since she had not had any workplace contact with the partner since July 11, 2017.

(6) On August 2, 2017, claimant attended a management team meeting at which the ex-partner was also in attendance. After the meeting, claimant's ex-partner sent many abusive text messages to claimant on her work cell phone. The messages frightened claimant. On August 8, 2017, claimant attended an employer-sponsored meet and greet event that the ex-partner also attended. When claimant became aware of the ex-partner's attendance, she became afraid and left the meet and greet. On August 9, 2017, claimant attended another management meeting at which her ex-partner was also present. Claimant became concerned that the supervisor's plan to keep her physically separated from the ex-partner was not working.

(7) On August 23, 2017, claimant attended a management team meeting at which the ex-partner was also in attendance as well as a program director. During that meeting, the ex-partner "berated" claimant, called claimant a "bad parent," stated the claimant was "pathetic" and asked if claimant "ever got tired of playing the victim." Transcript at 9. The ex-partner also questioned the efficacy of the precautions that the employer was taking to protect claimant. None of those in attendance, including the program director, took steps to stop the ex-partner's tirade or to have the ex-partner leave. After the meeting, claimant was upset and afraid.

(8) On September 1, 2017, claimant left work. Claimant decided to leave because she feared for her physical and emotional safety in the workplace due to the presence of the ex-partner in the workplace and had concluded that employer was unwilling or unable to protect her from the abusive behaviors of her ex-partner.

**CONCLUSIONS AND REASONS:** 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 may not be disqualified from if she left work because she was or believed she could become a victim of domestic violence, stalking or sexual assault and she left work to protect herself from domestic violence, stalking or sexual assault that she reasonably believed will occur if she remains employed. ORS 657.176(12). “Domestic violence” means actual physical injury or the threat of such injury to a person by another person who has had a significant relationship with the person at some time in the past, to the extent that the person’s health, safety or welfare is harmed or threatened thereby. OAR 471-030-0150(2) (November 1, 2009). “Stalking” means that a person intentionally or recklessly engages in repeated and unwanted contact with another, it is objectively reasonable for that person to have been alarmed or coerced by the contact and the repeated and unwanted contact causes a person to have a reasonable apprehension for the person’s own personal safety. OAR 471-030-0150(3).

It was not disputed at hearing that claimant was the victim of domestic abuse perpetrated by her ex-partner. Claimant’s past relationship with her ex-partner was sufficiently significant and the nature of the abuse she sustained was of a type that it constituted domestic violence within the meaning of OAR 471-030-0150(2). Based on claimant’s description of the domestic violence to which she was subjected by her ex-partner and her description of her ex-partner’s workplace behavior when she came into contact with the ex-partner after July 11, 2015, the record shows that claimant’s belief that if she continued working she would be the victim of further domestic violence was, most likely, reasonable under the circumstances. While the employer appeared to argue at hearing that claimant should be disqualified from benefits because she did not pursue reasonable alternative in lieu of quitting, OAR 471-030-0150(2), different from OAR 471-030-0038(4), does not require victims of domestic violence to pursue reasonable alternatives to prior to leaving work to avoid disqualification from benefits. Claimant therefore is not disqualified from benefits.

**DECISION:** Hearing Decision 17-UI-98002 is affirmed.

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

**DATE of Service:** January 12, 2018

**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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