

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1424**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111853). Claimant filed a timely request for hearing. On September 18, 2017, ALJ Meerdink conducted a hearing, and on September 19, 2017 issued Hearing Decision 17-UI-92878, affirming the Department's decision. On September 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On October 27, 2017, EAB issued Appeals Board Decision 2017-EAB-1156, reversing Hearing Decision 17-UI-92878 and remanding the matter to the Office of Administrative Hearings (OAH) for further development of the record. On November 16, 2017, ALJ Meerdink held a hearing for further development of the record, and on November 22, 2017, issued Hearing Decision 17-UI-97501, concluding claimant voluntarily left work with good cause. On December 11, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Oregon Carbide Saw Corp. employed claimant from July 2015 to July 14, 2017 to do accounts receivable and customer service.

(2) Claimant was diagnosed with celiac disease in 2010 and ulcers in 2016. Claimant had already had part of her intestinal tract removed due to celiac. Work stress made claimant's gastrointestinal symptoms from her medical conditions worse.

(3) The employer's two owners would periodically have outbursts of anger toward claimant at work. In September 2016, the owners made claimant responsible for sending out the employer's parcels. During October 2016, claimant told the owners she was unable to continue preparing the parcels because they were too heavy for her to lift. The owners told claimant she no longer had to prepare the parcels. Two days later, the person who had the parcel duties asked claimant for help because he was behind that day. Claimant helped him. One of the owners saw claimant working on parcels, was displeased, and started yelling at claimant "violently" with a "bright red" face and "spit coming out of his mouth" while he "screamed" at claimant for approximately 15 minutes. Transcript (September 18, 2017) at 16. Claimant was shaking and tried to explain that she was helping because the employee had fallen behind, and the owner said to claimant, "I own this place, you guys don't. I make the rules." *Id.* at 16.

(4) On another occasion, a repairperson at work was looking for a hotel, and claimant commented that one hotel was "sleazy." Transcript (September 18, 2017) at 17. One of the owners stated to claimant and the repairperson, "Well, if I cheated on my husband, I would need these places, too." *Id.* Claimant felt humiliated because she believed the owner was implying that claimant was unfaithful to her husband. On another occasion, the same owner referred to claimant as "it" to a mail carrier. *Id.* at 17-18. The other owner also made a statement in front of claimant about people like claimant who are intolerant to gluten, stating that they are "just looking for attention and to be all trendy." *Id.* at 18.

(5) In February 2017, one of the owners repeatedly yelled at claimant throughout the day, asking claimant what she had done to the employer's computers because the server was down that day. Claimant responded repeatedly that she had done what she always did to start the computers. Claimant felt "badgered" by the owner. Transcript (September 19, 2017) at 67.

(6) Throughout claimant's employment, one coworker repeatedly made racially insensitive comments that bothered claimant. The employer was aware of some of the comments, but told claimant to ignore them.

(7) Claimant tried to avoid conversation with the owners to reduce her exposure to stressful situations at work. However, claimant experienced increasing vomiting, diarrhea, insomnia, and stomach pain due to work stress and the unpredictability of her working conditions during 2017. Claimant's doctor advised her to eliminate stressful situations from her life because her long-term use of medication to treat her gastrointestinal symptoms could damage her stomach. During June 2017, claimant's symptoms improved when she was away from work on vacation for two weeks. Exhibit 1.

(8) On July 14, 2017, claimant told one of the owners that a parts supplier had put a credit hold on the employer's account and not shipped some parts claimant had ordered for a new job that would begin the following Monday. The owner stood up and told claimant she was "sick and tired of [claimant's] fucking attitude. I'm taking a break." Transcript (September 18, 2017) at 13. The owner stood up and walked out of the front door. Claimant turned to a coworker who was sitting nearby and said, "This is it. This is the very last time she's going to treat me this way." *Id.* at 40.

(9) On July 14, 2017, claimant quit work due to work stress and its impact on her health. Claimant's gastrointestinal symptoms from her medical conditions improved when she left work with the employer.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant suffered from celiac and chronic ulcers. Claimant’s conditions were permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

We conclude claimant faced a grave situation because her stressful working conditions caused the symptoms from her medical conditions to worsen such that, in addition to pain and discomfort, she risked long-term damage to her gastrointestinal tract. Claimant had repeated stressful interactions with the owners and her relationship with them was apparently deteriorating and unlikely to improve. There is no evidence to show that any measure taken by claimant would improve her working conditions or lessen their impact on her health. To the contrary, the record shows claimant tried to avoid confrontation with the owners, but the stressful incidents continued. There is no reason to conclude claimant’s health would improve more than temporarily by taking time off from work because she would return to the same working conditions that aggravated her health condition. We thus conclude no reasonable and prudent person with claimant’s physical impairments, whose health was so affected by her working conditions, would continue working for the employer for an additional period of time under the circumstances claimant described.

Claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 17-UI-97501 is affirmed.

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

**DATE of Service:** January 17, 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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