

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0109**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged but not for misconduct within 15 days of a planned voluntarily leaving without good cause (decision # 105744). Claimant filed a timely request for hearing. On January 17, 2018, ALJ S. Lee conducted a hearing at which the employer did not appear, and on January 19, 2018 issued Hearing Decision 18-UI-101308, affirming the Department's decision. On January 31, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB in which she provided the identical documents that constituted hearing Exhibit 1. EAB considered Exhibit 1 and the entire record when reaching this decision.

**FINDINGS OF FACT:** (1) Friends of Estacada Community Center, Inc. employed claimant as a part-time office coordinator from February 15, 2015 until November 15, 2017.

(2) Shortly after claimant was hired in 2015, it was decided that claimant would pick up the employer's mail from its post office box. The person who had previously been picking up the mail refused to turn over the post office box key to claimant. Ultimately, the president of the employer's board removed the key from that person's key ring when the person left it unattended on a desk and gave the key to claimant.

(3) In approximately April 2017, the employer hired a new general manager. At that time, the employer's paid staff was small and included claimant, another part-time office worker, a kitchen worker and two part-time bus drivers. For various reasons, claimant found it difficult to work with the new general manager. Claimant thought that the general manager made some decisions without knowledge of or taking into account the employer's history or culture. On the occasions when claimant

tried to explain and discuss this background with the general manager, the general manager would curtly thank claimant for her “input” and thereby end the discussion. Audio at ~13:16.

(4) As time passed, claimant’s relationship with the general manager deteriorated. Around June 2017, claimant became concerned that the general manager was not completely forthcoming about decisions she made and implied the board had made or supported those decisions when it did not. When claimant tried to discuss her concerns with the general manager, the general manager stated, “Oh, get over yourself.” Audio at ~31:10. Claimant asked the general manager what she meant by that comment and the general manager stated, “I’m tired of talking about your feelings.” Audio at ~31:40. The general manager’s comment confused claimant and claimant did not understand it. Another time, claimant tried to discuss with the general manager why a decision the general manager had made might not have been advisable. Sometime after she initially approached the general manager, claimant told the general manager that she had “thought of something else” to say about the matter. Audio at ~32:40. In reply, the general manager abruptly stated to claimant, “Quit talking. Quit while you’re ahead.” Audio at ~32:40. Claimant asked the general manager what she meant by those comments and the general manager simply repeated the comments. Claimant thought the general manager did not like her, did not appreciate her efforts or contributions and did not want to deal with her.

(5) Over time, claimant came to dislike that the general manager and communicated with her almost exclusively by email even though they worked at desks in the same room that were within ten feet of each other. Claimant thought written communication was very inefficient and artificial in the context of their shared work space. Sometime during the summer of 2017, claimant asked the general manager to supply some information that she needed to complete the employer’s newsletter. When the general manager did not supply the requested information, claimant repeated the request to the general manager two days later and the general manager chose to respond to it by email from her desk rather than have a face-to-face interaction with claimant who was seated at an adjacent desk. Claimant told the general manager that they should be able to discuss such things in face-to-face. Rather than respond to claimant’s statement, the general manager told claimant to take the day off. Claimant thought the general manager was irritated that claimant wanted to use a different form of communication than she did. Claimant thought the general manager was displeased by her comment and had sent her home as a punishment.

(6) During the summer of 2017, claimant perceived that the general manager’s interactions with her were becoming increasingly hostile and “passive-aggressive.” Audio at ~12:06. Claimant approached the chairperson of the employer’s board twice that summer about the poor relationship she had with the general manager. The chairperson told claimant in substance, “I’m sorry you guys don’t get along” and “I hope you can work it out.” Audio at ~24:05. Claimant concluded that the chairperson “wanted the problem to go away.” Audio at ~24:05.

(7) On October 24, 2017, claimant sent an email to the employer’s vice-chairperson, copied to the chairperson, setting out her concerns about the general manager and the general manager’s treatment of her. Claimant asked for a meeting to try to find some solution for her difficulties. Exhibit 1 at 8. Claimant told the vice-chairperson she was going to leave soon on a vacation and would not be back in the office until November 13, 2017. The vice-chairperson responded to claimant’s email that day and stated she and the chairperson would meet with claimant privately to discuss claimant’s concerns and then they would meet with claimant and the general manager. During the time claimant was gone on

vacation that vice-chairperson sent claimant an email stating that she wanted to confirm that claimant had raised and discussed her concerns with the general manager before she and the chairperson met privately with claimant. Claimant replied that she had not, but still wanted to discuss her concerns privately with the chairperson and vice-chairperson because her attempts to discuss them with the general manager had not gone well. In reply, claimant was told that any meeting with the chairperson and the vice-chairperson would need to be postponed because the vice-chairperson was recovering from knee surgery. Exhibit 1 at 6. A date for that meeting was never decided on nor was that meeting ever scheduled.

(8) November 13, 2017 was claimant's first day back at work after her vacation. Upon her return, claimant asked the general manager where the key to the employer's post office box was since she intended to resume picking up the mail. The general manager told claimant she had given the key to the person who had covered claimant's duties while claimant was on vacation. When claimant approached and asked that person about the key, that person stated she had given the key to the person who had refused to turn the key over to claimant in 2015 and who had since become a board member. Claimant spoke to the board member on that day and the next day, November 14, 2017 about the key. On both days, the Board member stated she did not have the key with her. On November 14, 2017, the board member told claimant she was going to bring up the matter of who should have the post office box key at the next meeting of the employer's board. On both days, claimant told the general manager that, although she had requested the key, the board member had not given it to her. Claimant did not think the general manager was going to help her get back the key.

(9) On November 15, 2017, claimant met with the general manager to determine how the post office box key had come to be in the possession of a board member. At claimant's request, the board chairperson was present during that meeting. The general manager initially denied having any knowledge that the key was in the possession of the board member. When claimant brought up that she had notified the general manager that the board member had the key on the two previous days, the general manager acknowledged that she had known but stated she did not care who retrieved the mail from the post office box. The general manager then agreed that she had approved giving the key to the board member. Based on these statements, claimant concluded the general manager had been trying to "deceive" her about how the key came to be in the possession of the board member. Audio at ~24:34. Claimant decided to quit work because she could no longer deal with the general manager and the general manager's hostile and passive-aggressive approach with her. Claimant told the general manager that she was quitting and submitted a written resignation that she had brought with her to the meeting, stating that her last day of work would be November 30, 2017. In response, the general manager told claimant to turn in her key, gather together her personal belongings and that she was "done." Audio at ~10:52. In apparent reaction to the statements of claimant and the general manager, the chairperson stated, "I feel terrible about this. I wish we could talk about this." Audio at ~28:26. However, the general manager stated, "If she wants to leave, let her leave." Audio at ~28:32. The general manager then told claimant that the employer would give her a final paycheck that day, which it did. Claimant understood she had been discharged that day. Claimant left the workplace and did not return.

**CONCLUSIONS AND REASONS:** Claimant was discharged on November 15, 2017, not for misconduct, within fifteen days of a planned voluntary leaving on November 30, 2017 that was not for good cause. Claimant is eligible to receive benefits for the weeks of November 12, 2017 through November 18, 2017.

Immediately after claimant announced on November 15, 2017 that she was leaving work on November 30, 2017, the employer discharged her, which was exactly 15 days before the planned date of her voluntary leaving. Where, as here, a claimant notifies an employer that she plans to leave work on a particular date and the employer discharges claimant no more than 15 days in advance of the planned date of the voluntary leaving, ORS 657.176(8) is potentially applicable to claimant's claim. ORS 657.176(8) provides that if the employer discharged claimant no more than 15 days before the planned date of the voluntary leaving, if claimant's voluntary leaving would not have been for good cause and if the employer's discharge of claimant was not for misconduct, the work separation is adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred, except that claimant is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving. Accordingly, we must assess both claimant's planned voluntary leaving and the employer's discharge of claimant to determine the applicability of ORS 657.176(8). We turn first to the planned voluntary leaving.

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.

Based on claimant's description of the general manager's approach and the circumstances under which she worked, it appears that they were unpleasant and made her uncomfortable. However, it is not unknown for employees to work with brusque, curt, demanding and inconsiderate supervisors whose personal styles conflict with their own and most employees do not quit as result. The circumstances that claimant described did not rise to a grave level. For example, claimant did contend that the general manager yelled at her, engaged in fits of temper or tirades, personally insulted her, verbally, emotionally or physically abused her or anything resembling the like. The behavior of the general manager that claimant objected to in the workplace, while distasteful, did not constitute and was not tantamount to the type of oppressive workplace environment that has been found to be good cause for a claimant to leave work. *See McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to "sacrifice all other than economic objectives and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits)<sup>1</sup>. On this record, claimant did not meet her burden to show that a reasonable

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<sup>1</sup> *See* Employment Appeals Board Decision 13-AB-0502, April 2, 2013 (ongoing unwanted sexual advances and touching despite making complaints); Employment Appeals Board Decision 12-AB-3213, January 8, 2013 (ongoing sexual harassment); Employment Appeals Board Decision 12-AB-3173, December 14, 2012 (ongoing verbal abuse despite complaints); Employment Appeals Board Decision 11-AB-3647, February 9, 2012 (sexist and ageist remarks); Employment Appeals Board Decision 11-AB-3308, December 22, 2011 (supervisor's ongoing verbal abuse and fits of temper); Employment Appeals Board Decision 11-AB-2864, December 12, 2011 (management's ongoing ageist comments and attitudes); Employment Appeals Board Decision 11-AB-3063, October 28, 2011 (corporate culture hostile to women); Employment Appeals Board Decision 11-AB-2272, September 6, 2011 (supervisor's regular fits of temper and verbal abuse).

and prudent person in her circumstances would have considered those circumstances objectively grave and would have left work due them.

Turning to the employer's discharge of claimant, ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. The employer has the burden to demonstrate claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

From the record, no reason can be discerned for the employer's discharge of claimant on November 15, 2017 other than that claimant had just notified the employer that she was going to leave work on November 30, 2017. That claimant had submitted a resignation from work was not misconduct since it did not amount to a willful or wantonly negligent violation of the standards that the employer had a reasonable right to expect of claimant. Because claimant's discharge was not for misconduct and it occurred within 15 days of the date she planned to leave work, not for good cause, she is eligible to receive benefits under ORS 657.176(8) for the weeks of November 12, 2017 through November 18, 2017 (weeks 46-17 through 47-17).

Under ORS 657.176(8), claimant's work separation was a voluntarily leaving without good cause. However, due to the employer's intervening discharge of her, not for misconduct, claimant is eligible to receive benefits for the weeks of November 12, 2017 through November 18, 2017 (weeks 46-17 through 47-17).

**DECISION:** Hearing Decision 18-UI-101308 is affirmed.

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

**DATE of Service:** March 5, 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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