

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0444**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 144932). Claimant filed a timely request for hearing. On April 10, 2018, ALJ Jarry conducted a hearing, and on April 11, 2018 issued Order No. 18-UI-107084, concluding that claimant quit working for the employer with good cause. On April 26, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

Although the employer submitted a written argument to EAB, it 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). For this reason, EAB did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Big 5 Sporting Goods employed claimant in one of its stores from February 28, 2015 until February 28, 2018, last as first assistant manager.

(2) Until sometime in December 2017, claimant had a good working relationship with the manager of the store at which she worked. Claimant and the manager were also very close friends and had a good personal relationship.

(3) In December 2017, claimant's store participated in a contest sponsored by the employer in which individual stores earned points and could win prizes based on the sales generated during the holiday season. The store at which claimant worked had won the contest in 2016 and the manager hoped to win again in 2017. In mid-December 2017, claimant purchased some items from the store, but did not structure her purchases in a way that maximized the number of points that the store earned on the purchases. Claimant's manager learned of claimant's purchases and spoke to claimant about how she could have structured those purchases to earn several more points for the store than she had. The manager was so upset at claimant about her actions in relation to the holiday contest that she told claimant that they could "no longer be friends." Audio at ~24:36. Claimant perceived that the manager was very angry with her about how she had accounted for the purchases. Claimant ultimately offered to return the items to the store and re-purchase them in a way that maximized the points the store would

earn. The manager was aware that she and claimant had a “conflict” arising from the holiday contest. Audio at ~45:59.

(4) After speaking with the manager about the holiday contest in December 2017, claimant thought that the manager was aggressive and hostile toward her on a daily basis. In the weeks following that discussion, the manager spoke with claimant on several occasions about her leadership of subordinates in the store and how she needed to change her behavior to reach the “level of leadership” that the manager desired. Audio at ~47:23. In these conversations, the manager raised issues she had with claimant’s physical appearance and asked claimant about her health. On one occasion, the manager commented on the frequency with which claimant used the employees’ restroom while on duty and suggested that claimant’s subordinates might follow her example and use the restroom excessively. Claimant then discussed excessive restroom use with her subordinates, and began to joke with them before she visited the restroom that “I’m gonna get paid to poop.” Audio at 47:23. When the manager learned of claimant’s discussion with her subordinates and the comments she made before using the restroom, the manager told claimant that she needed to “lead better” by example and that “her actions affected the store.” Audio at ~47:23.

(5) On other occasions in January 2018, the manager also discussed various other improvements in claimant’s leadership and attitude that she thought were needed. Sometimes these discussions were in the presence of claimant’s subordinates and they embarrassed claimant. Claimant would cry during and after her conversations with the manager, and vomit. Claimant thought that, in these discussions, the manager was becoming increasingly hostile and aggressive toward her and attacking her character and integrity. Claimant believed that she could not satisfy the manager. As result of her perceptions of the manager’s behavior toward her, claimant began to feel ill at work. Claimant developed migraine headaches and stomach issues, which she had never experienced before, as a result of the work-related tension she experienced. At one point, claimant thought she was “having a heart attack” after a discussion with her manager. Audio at ~14:36. On January 5, 2018, claimant saw her doctor about the migraines and stomach problems she was experiencing as well as well as the physical symptoms that mimicked a heart attack. Audio at ~14:38; Exhibit 1 at 9, 16. During that visit, the doctor told claimant that her “blood pressure was out of control” and noted in claimant’s medical records that claimant had “elevated blood pressure reading in office without diagnosis of hypertension.” Audio at ~14:45; Exhibit 1 at 16. Claimant declined to take high blood pressure medicine since did not believe in taking medication and preferred to control her blood pressure by implementing lifestyle changes such exercising more. Audio at ~14:57. After claimant saw her doctor, she returned to work.

(6) On January 15, 2018, claimant’s manager met with claimant. The manager discussed with claimant that claimant had violated the employer’s policies on January 12, 2018 by opening the store without having another employee present outside the store. In fact, the manager was mistaken and other employees had been present on that day when claimant opened the store. The manager intended to give claimant her first written warning that day based on the manager’s mistaken belief. During the manager’s discussion with claimant, claimant stated that she had not violated the employer’s policy. The manager then criticized what she perceived to be claimant’s poor attitude at work, her poor leadership and prior criticisms claimant had made of the manager. The manager told claimant that claimant’s behavior was causing low morale in the workplace. Claimant told the manager that she felt harassed by the manager. During this discussion, claimant was crying, developed a migraine headache, her head was “pounding,” and she became nauseated and felt sick. Exhibit 1 at 10; Audio at ~14:51,

~15:10. Claimant told the manager that she was sick, needed to go home and was probably going to be out sick the following day. The discussion with the manager had so unnerved claimant that she vomited on the way home.

(7) On January 16 and 18, 2018, claimant saw her doctor. On January 18, 2018, the doctor noted in claimant's medical records that claimant was having a migraine headache and that her blood pressure was still elevated. The doctor ordered blood tests and sonograms to rule out organic causes for her stomach issues as well as a neurological evaluation for claimant's migraine headaches. Exhibit 1 at 27. The doctor authorized a medical leave of 10 days for claimant. The doctor instructed claimant to come in to her office for blood pressure testing during each day that claimant was on leave, which claimant did. Claimant took the doctor's note authorizing the leave to the employer on that same day, January 18, 2018.

(8) On January 31, 2018, claimant visited her doctor for abdominal pain. Exhibit 1 at 35. Claimant's blood pressure was still elevated. *Id.* Claimant learned that her blood tests and sonogram had been normal and that her elevated blood pressure, migraine headaches and stomach issues were likely due to workplace stress. Claimant had never experienced stress or physical symptoms due to stress before her relationship with her manager deteriorated around mid-December 2017. At around this time, claimant's date to return to work was extended to February 5, 2018.

(9) On January 31, 2018, claimant spoke with her manager about her return to work. At that time, claimant interpreted certain comments the manager made to her as hostile. Claimant was concerned about returning to work. On February 1, 2018, claimant called the supervisor to learn when she was expected to return to work. Claimant understood the supervisor to tell her that she would be meeting with the district supervisor on her first day back at work. Claimant expected the district supervisor would ask her to justify some of her recent actions about which the manager had complained and the reasons underlying her medical leave. Claimant became very anxious about returning to work.

(10) On the morning of February 5, 2018, claimant felt physically sick at the prospect of returning to work. Before the scheduled start of her shift, claimant visited her doctor's office to have her blood pressure tested. Claimant's blood pressure was again elevated. Claimant's doctor told her that, in light of her blood pressure level, "It's your health or your job. You decide." Audio at ~16:36.

(11) After meeting with the doctor before work on February 5, 2018, claimant decided she needed to quit work to preserve her health given the physical manifestations of the stress she experienced as a result of the conflict with and hostility of her manager. Claimant did not consider contacting other members of the employer's management, its "we care" hotline or the employer's human resources department to try to remedy the situation between her and the manager because the manager had previously told claimant many times that the manager was an indispensable employee while claimant was not and claimant thought any such effort would fail. Audio at ~22:21.

(12) After claimant quit work, the alternate means she implemented to decrease her blood pressure under her doctor's supervision, principally exercise, had reduced her blood pressure to normal levels after three months or by approximately March 2018. Audio at ~28:00.

**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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). However, for a claimant with a “long-term physical or mental impairment as defined at 29 CFR §1630.2(h), good cause for leaving work is such that a reasonable and prudent person with the qualities and characteristics of an individual with such an impairment would leave work.

While it was not disputed the claimant developed high blood pressure and migraine headaches over the approximately six weeks preceding her decision to leave work, the evidence suggests that she had not previously experienced either condition. No evidence was presented showing that either condition constituted a permanent or long term impairment. The evidence does not establish that the modified standard for showing good cause, that for a person with a long-term or permanent impairment, is applicable to claimant’s circumstance.

Claimant credibly testified that health conditions, principally high blood pressure, stomach issues and migraine headaches, caused her to leave work when she did. The employer did not dispute that claimant experienced these ailments or that stress from the hostility in the workplace that claimant perceived either gave rise to them or seriously exacerbated them. As claimant described the impacts of these conditions on her health, it appears that they were serious and, in combination, constituted grave circumstances. This conclusion was corroborated by the medical opinion of claimant’s doctor, whose advice on the day she quit was that she had only two choices available to her under the circumstances: either her job or her health or, in other words, that she needed to quit work if she wished to preserve her health. The salient issue in this case is not whether claimant faced a grave situation but whether she had reasonable alternatives to quitting when she did.

While claimant did not seek intervention from members of the employer’s management, the employer’s human resources office or its corporate “we care” hotline to lessen or eliminate the hostility and aggression she perceived from her manager, claimant’s grounds for believing that it would be futile, based on the manager’s comment to her about the relative indispensability of the manager as opposed to her, were credible and sincere. Notably, the employer did not dispute claimant’s testimony about the manager’s comment. On this record, it cannot be concluded that it was unreasonable for claimant to interpret that comment as meaning that it was not likely she would be successful if she sought the involvement of other management, offices or departments. Given the gravity of claimant’s situation and the credibility of her testimony, it does not appear that there were reasonable alternatives to her quitting work when she did.

Claimant quit work when she did with good cause. Claimant is not disqualified from receiving unemployment benefits.

**DECISION:** Order No. 18-UI-107084 is affirmed.

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

**DATE of Service:** May 30, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.