

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0965**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 162141). Claimant filed a timely request for hearing. On September 18, 2018, ALJ S. Lee conducted a hearing at which the employer failed to appear. On September 26, 2018, ALJ S. Lee issued Order No. 18-UI-117261, affirming the Department's decision. On October 3, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The City of Monument Oregon employed claimant from November 17, 2016 until July 17, 2018, last as a public works assistant.

(2) Claimant worked in the same office as the city recorder. Claimant was dissatisfied with how the city recorder acted toward her at work. Claimant considered the manner in which she treated claimant to be rude and unprofessional based on her tone of voice and because she sometimes disagreed with claimant's comments.

(3) In 2017, claimant was upset when she received a reprimand for working more than 40 hours per week during several weeks. Claimant was dissatisfied when the city council thereafter required her to submit a daily email to the city council members detailing her daily work schedule and activities. Claimant believed one of the city council members was watching her while she worked, looking for a reason to discipline her.

(4) Claimant sometimes had to review emails in the city recorder's work email account because they pertained to claimant's job. Sometime before June 21, 2018, claimant was reviewing emails in the city recorder's account and saw several emails about pending litigation involving the employer. The emails did not relate to claimant's job duties. Out of curiosity, claimant forwarded the emails to her work email, read them, and deleted them. On June 21, 2018, the employer put claimant on administrative leave while it investigated the email incident. Claimant believed the city recorder and the same city council member who often watched her working were responsible for the employer's decision to put claimant on administrative leave.

(5) Claimant suggested two potential employees to the city recorder who could cover her duties while claimant was on administrative leave. The city recorder told claimant she preferred to have claimant's previous assistant, who no longer worked for the employer, perform claimant's duties while she was on leave. Claimant felt the city recorder wanted to train claimant's prior assistant to take claimant's job.

(6) Claimant felt mistreated by the city recorder, and as a result of the stress from how the city recorder behaved toward claimant, claimant would frequently wake up in the morning with "knots in [her] stomach." Audio Record at 22:49 to 22:57.

(7) Claimant was not able to complain about the city recorder's behavior to the mayor or one member of the city council because of claimant's familial and personal relationships with them. Claimant felt that the remaining city council members would always support the city recorder because they had not supported claimant when claimant had complained to the city council in the past.

(8) At the beginning of each month, claimant was required to prepare and submit a sewer report to the state. Claimant was required to have a "direct response" person review and sign the paperwork she prepared before submitting it to the state. On July 1, 2018, while claimant was still on administrative leave, the direct response person advised the city recorder to call claimant in to work to assist with preparing the sewer report. Claimant went to work, reviewed the report, and told the city recorder that the report was missing necessary information. Claimant was upset by the city recorder's reaction to her comment because she "acted like she knew it all," and stated that she would call in claimant's prior assistant to complete the report. Audio Record at 9:50 to 9:52. Claimant felt frustrated because she knew that her former assistant had not been trained in how to complete the paperwork.

(9) On July 3, 2018, claimant submitted her resignation to the employer to end her employment on July 17, 2018. Claimant left work on July 17, 2018 because she was no longer willing to work with the city recorder because she was rude to claimant and caused claimant to have stomach problems.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that 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) (January 11, 2018). 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. For a claimant with a permanent or 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 characteristics and qualities of such an individual would leave work.

Although claimant testified that she felt stress and often awoke with "knots" in her stomach, she did not show that any of these symptoms arose from a permanent or long-term impairment. There is insufficient

evidence in this record to apply the modified standard for showing good cause that is reserved for individuals with permanent or long-term impairments.

Claimant quit work due to the stress she felt from how the city recorder treated her at work. However, although claimant provided sincere, credible testimony about how she felt mistreated by the city recorder, the objective standard of a reasonable and prudent person, rather than one based on claimant's subjective experience, must be applied to determine if claimant had good cause for leaving work. As described by claimant, it did not appear that the behavior of the city recorder was sufficient to create an objectively grave, abusive or oppressive work situation. *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> Although the city recorder's behavior may have been rude or inconsiderate, the incidents described by claimant did not constitute the type of severe or pervasive abuse that amounts to a situation of such gravity that she had no reasonable alternative but to leave work when she did. Moreover, some of the city recorder's conduct could be interpreted as based on non-grave, non-abusive and neutral business reasons. Nor did claimant show that the physical side effects she felt from work stress left her with no reasonable alternative but to quit to preserve her health.

Claimant did not show that she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-117261 is affirmed.

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

**DATE of Service:** November 6, 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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<sup>1</sup> *See also* 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 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).