

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0999**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 28, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153945). Claimant filed a timely request for hearing. On October 5, 2018, ALJ S. Lee conducted a hearing at which the employer did not appear, and on October 12, 2018 issued Order No. 18-UI-118141, affirming the Department's decision. On October 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record, including new reasons for leaving work. However, claimant did not explain why she did not offer this information during the hearing and otherwise failed to show that factors or circumstances beyond her reasonable control prevented from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For that reason, EAB did not consider claimant's new information, but considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Contract Flooring and Interiors Inc. employed claimant as an accounting specialist from February 26, 2018 until July 13, 2018. Claimant had 30 years of experience in the field of accounting.

(2) Claimant performed accounting work for the business that the employer operated as Contract Flooring and Interiors Inc. (CF&I) as well as another business that the employer operated, Portland Marble. Claimant was responsible for accounts payable and receivable, payroll and banking for both of those businesses.

(3) Around May 2018, the employer decided to let go of its chief financial officer, who up to that time had been claimant's supervisor. The employer designated its estimator to be claimant's supervisor. The estimator had no training or experience in accounting and was unfamiliar with the job duties that claimant was required to perform. Around this same time, the employer hired a controller who claimant expected would be responsible for preparing payroll. However, the new controller tasked claimant with most of the work required to prepare the payroll, and the controller only entered numbers that claimant

had previously calculated into the payroll system. Claimant thought she was performing the majority of the controller's work.

(4) On and after May 2018, the estimator began assigning to claimant more tasks that she reasonably was able to complete in the timeframe specified. Claimant thought that the estimator did so due to his lack of accounting knowledge and his ignorance of the amount of work underlying the tasks that he was assigning. When claimant would try to tell the estimator that his expectations about the workload she could handle were unreasonable, the estimator would simply tell her "you need to make time in your day" to accomplish those tasks, without understanding the magnitude of the work he had assigned to her. Audio at ~28:59. Claimant's difficulties were compounded by the fact that she was performing the accounting for two independent businesses. Claimant felt overburdened and overworked. Claimant did not inform the owner, with whom she was acquainted, how she felt because she was not comfortable doing so.

(5) From July 1 through July 9, 2018, claimant was away from work on a vacation that the employer had approved. No employees covered claimant's job duties while she was on vacation, and all tasks that she would have completed during that time went unperformed. On Tuesday, July 10, 2018, upon returning to work, claimant began the end of the month closing tasks for CF&I for the month of June since that had not been done while she was away.

(6) On Wednesday, July 11, 2018, claimant tried to continue working on the end of the month closing tasks for CF&I, but the estimator interrupted her and instructed her to report to Portland Marble to complete various accounting tasks. Although the estimator had told claimant not to perform any accounting tasks for Portland Marble during the week before claimant went on vacation, he told claimant that he expected the work she needed to do at Portland Marble would take two to three hours. When claimant told the estimator that it was "impossible" to complete the requested work in two or three hours since she had not done accounting work for Portland Marble for two weeks, the estimator told claimant, "I don't care" and suggested that she "skip lunch" to get the assigned work done at Portland Marble and return to CF&I to finish its end of the month closing tasks. Audio at ~15:20. Claimant went to Portland Marble that day and completed the work that the estimator had assigned to her, which took longer than two to three hours. Claimant did not report all the time that she worked on her timecard for that day since it exceeded the estimator's estimate. On Thursday, July 12, 2018, claimant returned to CFI and finished closing its June books.

(7) On Friday, July 13, 2018, claimant reported to CF&I and intended to complete various tasks that had not been performed when she was on vacation. Sometime around the early afternoon, the estimator approached claimant and commented in irritation that "nothing's done, the filing's not done." Audio at ~16:26. Claimant was upset and tried to explain to the estimator that no one had been performing routine accounting work while she was away on vacation and she had had to attend to end of the month closing tasks immediately upon her return, which had not allowed her to catch up other accounting work. At that point, the estimator began "screaming" at claimant. Audio at ~17:16. The estimator had never before yelled at claimant or treated her as he did on this day. Audio at ~19:05. After the estimator's outburst, claimant was shaking and told the estimator that she was "really upset and not feeling well" and wanted to go home. Audio at ~17:16. The estimator responded by yelling at claimant, "So you're walking out?" Audio at 17:36. Claimant then returned to her desk at around 3:00 p.m. to finish up what she had been working on. Sometime around 4:00 p.m., claimant tried to speak with the estimator to resolve matters.

The estimator told claimant that he would not speak to her and he wanted to end their previous conversation. Claimant then left for home an hour earlier than the scheduled end of her shift.

(8) On July 13, 2018, after ending her shift, claimant sent a text message to the employer's owner who was away from work on vacation at that time. The message stated that she was "resigning effective today" because she could "no longer put up with the harassment and disrespect" of the estimator. Exhibit 2 at 4. The owner responded by expressing his apologies, stating that he had not heard such complaints about the estimator before and also stating that he was on his way back from vacation. Exhibit 2 at 5. Later that day, claimant sent another text message to the owner describing in more detail the reasons she had decided to quit. Claimant ended the text message to the owner by commenting that she would be "happy to speak with you further if you like" and that she "lik[ed] working" for him "but things have just gotten to that point." Exhibit 2 at 6. By these text messages to the owner on July 13, 2018, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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.

Although claimant testified that she objected to the way in which the estimator expected her to handle an unreasonable workload, she stated that the reason she left work when she did was because the way in which the estimator yelled and treated her on July 13 led her to feel "threatened" and to fear that she would be "physically harmed." Audio at ~9:56, ~30:32. However, claimant did not describe any objectionable behaviors by the estimator that day other than his vocal behavior in yelling at her, and did not refer to any physical gestures or specific communications from which she could objectively infer that the estimator was directing a physical threat at her or even that he was trying to intimidate her. Claimant also testified that the estimator had never acted in a way that she perceived as physically threatening before his July 13 outburst. Audio at ~19:08. Absent some objective basis from which a physical threat might be inferred, a single instance of yelling by the estimator, who was claimant's acting supervisor, would, most likely, not constitute a grave situation to a reasonable and prudent person of normal sensitivities who was exercising ordinary common sense. As well, the behaviors of the estimator to which claimant objected, while they might have been subjectively offensive and distasteful to claimant, were not, as described, the types of behaviors that have previously been found to constitute an objectively oppressive or abusive work environment sufficient to show good cause for leaving 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). On this record, claimant did not show, viewed objectively, that the estimator's behavior was good cause for leaving work.

Alternatively, assuming the estimator's behavior created an objectively grave circumstance for her, claimant also did not show that she had no alternative other than to leave work when she did. Claimant testified that she thought the estimator treated her as he did on July 13 because the owner was away on vacation, was not in the workplace that week and the estimator "just took advantage of it [the owner's absence]." Audio at ~22:00. From this testimony, it is inferable that claimant viewed the owner's presence as exercising a tempering influence over the estimator's behavior and constraining him from mistreating her or acting in ways, she considered objectionable. A reasonable and prudent person in claimant's circumstances who believed that the owner moderated the offensive behaviors of the estimator would not have decided to leave work without first having informed the owner of the estimator's behaviors and giving the owner an opportunity to correct them. However, claimant testified that she never complained to the owner about the estimator's unreasonable expectations of her or his behaviors toward her. Audio at ~14:06. While claimant emphasized that in a text message she sent to the owner *after* she resigned she told him that she was willing to discuss what had happened between her and the estimator on July 13, that message was not tantamount to a direct or indirect request that the owner intervene as an alternative to claimant quitting work since claimant had already quit by that time and there was no indication in the message that, if the owner took appropriate action, claimant would rescind her resignation. Audio at ~20:47. On this record, claimant did not show that she had no reasonable alternative to leaving work when she did because she did not seek to have the owner intervene and address her objections to the estimator's behavior before she resigned.

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

**DECISION:** Order No. 18-UI-118141 is affirmed.

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

**DATE of Service:** November 20, 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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