

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0817

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit without good cause (decision # 133945). Claimant filed a timely request for hearing. On May 7, 2014, ALJ Murdock conducted a hearing, and on May 8, 2014 issued Hearing Decision 14-UI-17133, affirming the Department's decision. On May 13, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Because claimant's argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (October 29, 2006), the argument was not considered by EAB when reaching this decision.

**FINDINGS OF FACT:** (1) Shelter Management, Inc. employed claimant as a community manager from August 13, 2009 to March 20, 2014.

(2) Claimant and her husband lived in an apartment located on the property she managed. The apartment was connected to her employment, and she was not eligible to keep her housing if she left work or took a leave of absence.

(3) Claimant's husband had short-term memory loss. He was unable to see to his own activities of daily living, including shopping, eating, and taking medication, among other things, and required claimant's help throughout each day. Claimant saw to it that he took certain medications three times each day, and another medication every four hours. Claimant had to assist her husband with other tasks throughout the day, and he sometimes interrupted her in the office because he needed her.

(4) The employer began reprimanding and giving claimant warnings for failing to complete her job duties or being out of the office when supervisors expected her to be in the office. Claimant's supervisors expressed displeasure with claimant when she left during the workday to assist her husband, was not in the office when expected, or failed to complete a job duty.

(5) Claimant's daughter-in-law, who lived in Michigan, offered to help claimant care for her husband if they moved to Michigan. The daughter-in-law and her husband worked different shifts, and between the three of them they could provide claimant's husband with the level of care he needed. Claimant's daughter-in-law also offered to pay the cost of the move from Oregon to Michigan.

(6) Claimant found it increasingly difficult to care for her husband without help. Claimant predicted that she would continue to have problems at work related to her need to care for her husband. She could not take a leave of absence because could not stay in her apartment if she was not working, and she did not have another place to live. Claimant did not have anyone available to help her in Oregon. Claimant accepted her daughter-in-law's offer.

(7) Claimant sought work in Michigan prior to quitting work. Each time she was asked to attend an interview, however, the prospective employers wanted claimant to meet with them in-person and did not offer her the opportunity to interview remotely. Claimant was unable to find a job in Michigan while continuing to live in Oregon.

(8) On approximately February 20, 2014, claimant notified the employer of her intent to resign. Claimant quit her job, effective March 20, 2014.

**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). 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 purposes of applying OAR 471-030-0038(4), OAR 471-030-0038(5)(g) provides that "[l]eaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons." "Compelling family reasons" includes, in pertinent part, "The illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off." OAR 471-030-0038(1)(e)(B).

In Hearing Decision 14-UI-17133, the ALJ concluded that claimant did not quit for compelling family reasons because she quit "so other relatives could help with her husband's supervision" rather than caring for him herself, and she did not prove that she requested leave or that requesting leave would be futile. Hearing Decision 14-UI-17133 at 3. We disagree.

The plain language of OAR 471-030-0038(1)(e)(B) does not confine the compelling family reasons rule to situations in which claimant must be solely responsible for the care of an ill or disabled family

member. The fact remains that claimant quit work because her husband's condition necessitated care by another.

On this record, requesting leave would be an exercise in futility. Based on claimant's description of events, the employer was not unaware of her situation, or that she was taking time away from work to care for her husband, the result of which was that she was reprimanded or received warnings. Given that evidence, the record fails to show that the employer accommodated claimant's need for time off. Claimant could not take an extended leave of absence from work because she had to continue working to maintain her housing. Although the ALJ suggested that claimant might have requested intermittent leave, claimant did not know what that was or that it was available at the time she quit, and, even if she had, the record fails to show that taking intermittent leave was a viable option considering the frequency with which claimant had to assist her husband throughout each day, that claimant's husband interrupted her during her workday, and claimant did not have anyone else available to help her during times she had to work.

Claimant quit work to move out of state because her husband's condition necessitated care by others, and there weren't any leave options or assistance available to her that would allow her to continue working for the employer. Moreover, although not required by the compelling family reasons rule criteria, claimant attempted to secure work in the area to which she was moving before she moved, but was unable to do so without living in the area. Ultimately, claimant had no other option but to quit her job when she did. Claimant demonstrated that she had good cause for quitting work. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 14-UI-17133 is set aside, as outlined above.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, not participating.

**DATE of Service:** June 20, 2014

**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 website at [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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