

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1255

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 94402). The employer filed a timely request for hearing. On July 18, 2014, ALJ M. Davis conducted a hearing, and issued Hearing Decision 14-UI-21829, affirming the Department's decision.<sup>1</sup> On July 23, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted the following documents that were not offered as exhibits at the hearing: the employer's response to the "Notice of Claim Filed – Request for Separation Information" issued by the Department; the "Notice of Claim Determination (Potential Charges)" issued by the Department; a letter stating that because claimant left work for reasons not attributable to the employer, the employer's account would be relieved of charges for claimant's unemployment claim; and a note written by claimant, stating that he would be leaving work on May 15, 2004. Under OAR 471-041-0090, EAB may consider exhibits not received into evidence at the hearing if the party offering the information establishes that circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing. The employer failed to demonstrate that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. Accordingly, we considered only information received into evidence at the hearing in reaching this decision.

**FINDINGS OF FACT:** (1) JWM Enterprises Inc. employed claimant as a crew member from May 1, 2013 to May 14, 2014.

(2) In February 2014, the rent for the apartment claimant shared with his aunt was raised to \$1,400 per month, including utilities. Claimant's share of the rent and utilities was \$575 per month. Claimant and

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<sup>1</sup> Hearing Decision 14-UI-21829 states the hearing was held on July 15, 2014. However, the hearing was rescheduled to July 18, 2014.

his aunt were unable to pay the rent on time and on April 27, 2014, received an eviction notice. Audio Record at 10:00.

(3) Claimant and his aunt attempted to purchase a home in the area that would have cost them less than their apartment, but the sale of the property fell through. Claimant and his aunt were also unable to rent another apartment. Claimant and his aunt decided to move to Ohio, to live rent free with claimant's mother and cousin.

(4) Claimant gave the employer notice on May 7, 2014, that his last day of employment would be either May 15 or May 16. On May 14, however, claimant told the employer that he was leaving for Ohio on that date.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude that 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 P2d 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.

Claimant quit work on May 14, 2014 because he was unable to find housing in the Clackamas area that he could afford. Claimant and his aunt were unable to timely pay the rent on the apartment they shared, which at the time of claimant's work separation was \$1,400 per month. On April 27, 2014, claimant and his aunt received an eviction notice. They could not rent another apartment and their attempt to purchase an affordable house was unsuccessful. Claimant felt he had no alternative but to move to Ohio to live with his mother and cousin. Claimant's lack of housing was a situation of such gravity that a reasonable and prudent person, exercising ordinary common sense, would have believed he had no reasonable alternative but to quit work.

Claimant voluntarily left work without good cause. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-21829 is affirmed.

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

**DATE of Service:** September 2, 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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