

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0835**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #111000). Claimant filed a timely request for hearing. On June 24, 2015, ALJ Holmes-Swanson conducted a hearing, and on June 30, 2015, issued Hearing Decision 15-UI-40903, affirming the administrative decision. On July 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument to the extent it was relevant and based on evidence in the record.

**FINDINGS OF FACT:** (1) Ridehalgh & Associates, a law firm, employed claimant as a receptionist from July 12, 2007 to February 6, 2015.

(2) On December 4, 2014, claimant's long-time partner died. To better cope with the death of her partner, claimant decided she wanted to be closer to her father and sister, who lived in Coos Bay, Oregon. At the time of her partner's death, claimant lived in Hillsboro, Oregon.<sup>1</sup>

(3) On December 30, 2014, claimant told her employer that she was quitting her job; claimant said that she was willing to work until March 2015, but would prefer to leave sooner, if possible. Audio at 26:12. She told the employer that she was quitting because she wanted to be closer to family and wanted to help her elderly father, who was 85. Audio at 28:01.

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<sup>1</sup> We take official notice that the distance between Hillsboro and Coos Bay is 229.4 miles. See [bing.com/maps](http://bing.com/maps). Any party that objects to our taking notice of this fact must submit its objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) Sometime after December 30, the employer hired an employee to replace claimant, and claimant helped train her replacement. At this time, claimant told the employer she was willing to stay through February.

(5) During the first week of February 2015, claimant talked with the employer and acknowledged that training her replacement had gone well. Claimant said that she wanted to leave on February 6, 2015, and the employer agreed that date would be her last day.

(6) After claimant quit her job with the employer, she moved to Coos Bay. Since her arrival in Coos Bay, she has provided care, support, and assistance to her sister, who has numerous medical issues and is a victim of domestic violence. She has also provided some assistance to her father, such as performing household chores he should not or cannot perform, and driving him various places. Although her father has a driver's license, his doctor has recommended that he not drive long distances. Her father is in good health, although he is sometimes forgetful.

**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). Under OAR 471-030-0038(5)(g), leaving work for "compelling family reasons" constitutes good cause. OAR 471-030-0038(1)(e)(A) defines "compelling family reasons" as including domestic violence "which causes the individual reasonably to believe that the individual's continued employment would jeopardize the safety of the individual or a member of the individual's immediate family." "Compelling family reasons" also includes a situation where "[t]he 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." Otherwise, "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.

At hearing and in her written argument, claimant asserted that she left work to move to Coos Bay to provide assistance and support to her sister, who has numerous medical issues and who has been abused by her husband. Claimant contended that her sister relies upon her to provide assistance with daily life activities, such as toileting, showering, and food preparation, as well as transportation to medical appointments, purchase of necessary medical supplies, and protection from her abusive spouse. According to claimant, her sister's poor health was the "number one reason" she quit her job. Audio at 21:25. We disagree.

Claimant never mentioned any need to care for her sister in her discussions with her employer about quitting her job. Instead, she told the employer she was leaving because she wanted to be closer to her family to better cope with the death of her partner, and also wanted to help care for her elderly father.

Audio 28:01. The employer's witness testified that he was unaware of the sister's situation until the hearing, when claimant testified about the difficulties her sister faced. Audio at 28:18. Although claimant's sister was admitted to the hospital soon after claimant left her job on February 6, 2015, claimant's decision to leave on that date does not appear to have been connected to her sister's hospitalization. Claimant told the employer she wanted to leave on February 6 because the training of her replacement had been successful. In addition, when the ALJ asked claimant why she chose February 6 as the date to leave her job, she testified that "I don't know what February 6 had anything to do with anything really .. it was a lot of stuff in my mind with the long term relationship being over." Audio at 12:13 to 12:17. Based on this record, we conclude it more likely than not that claimant quit her job to live closer to her family to better cope with the death of her partner and to assist her elderly father.<sup>2</sup>

Claimant failed to show that her desire to live closer to her family to help her deal with the loss of her partner constituted a grave situation. Although claimant's partner passed away in early December 2014, claimant planned to continue working through March 2015 and actually quit her job on February 6, 2015. Because claimant continued working for two months after her partner's death, it does not appear that her need to be with family was a grave situation that left her no alternative but to leave work when she did. Claimant also failed to show that she had good cause to quit work to care for her father. Although claimant's father is considered an immediate family member under OAR 471-030-0038(1)(f), he was not suffering from an illness when claimant left work, and was not disabled. Claimant therefore did not have good cause to quit work under OAR 471-030-0038(5)(g). In addition, the type of assistance claimant provides her father – help with household chores, and driving him various places – does not appear essential to her father's health or well-being.<sup>3</sup> The record therefore fails to show claimant had no reasonable alternative but to quit work to care for her father, and claimant therefore failed to establish good cause under OAR 471-030-0038(4).

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-40903 is affirmed.

Susan Rossiter and D. P. Hettle, *pro tempore*;  
J. S. Cromwell, not participating.

**DATE of Service:** August 20, 2015

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<sup>2</sup> However, even if we found that claimant quit work, in part, to care for her sister, we nevertheless would conclude that claimant quit work without good cause. Claimant contended that her need to care for and protect her sister from her abusive spouse constituted "compelling family reasons" and good cause for her voluntary leaving. As the ALJ correctly noted, however, claimant's sister is not an "immediate family member" as defined by OAR 471-030-0038(1)(f). Nor did claimant have good cause under OAR 471-030-0038(4) to quit work to care for her sister. At hearing, claimant testified that her sister was cared for in a hospital for approximately one month after her surgery in early February 2015, and in a care facility for at least another month. Audio Record at 14:15. The record therefore fails to show claimant had no reasonable alternative but to quit work on February 6, 2015 to protect and care for her sister.

<sup>3</sup> Although claimant's father is considered an immediate family member under OAR 471-030-0038(1)(f), he was not suffering from an illness when claimant left work, and was not disabled. The provisions of OAR 471-030-0038(5)(g) are inapplicable to claimant's circumstances.

**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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