

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1233**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 63822). Claimant filed a timely request for hearing. On October 7, 2015, ALJ McGorin conducted a hearing and issued Hearing Decision 15-UI-45550, affirming the Department's decision. On October 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted a written argument, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB therefore considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) BPO Elks Lodge #2105 employed claimant as a bartender from July 19, 2013 to July 11, 2015. Claimant lived and worked for the employer in Newport, Oregon.

(2) Claimant decided he wanted to live in Tucson, Arizona to be closer to family. In mid-June 2015, claimant traveled to Tucson to search for work, and determined that he needed to move to Tucson to continue his search. When claimant returned to Newport, he notified the employer that he was quitting work, effective July 11, 2015.

(3) Claimant quit work to move to Tucson to search for other work.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant quit work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Quitting work without good cause includes quitting suitable work to seek other work.<sup>1</sup> OAR 471-030-0038(5)(b)(A) (August 3, 2011).

Quitting work with good cause includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g). “Compelling family reasons” means domestic violence, as defined in OAR 471-30-0150, 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; 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; or the need to accompany the individual’s spouse or domestic partner to a place from which it is impractical for such individual to commute due to a change in location of the spouse’s or domestic partner’s employment. OAR 471-030-0038(1)(e). “A member of the individual’s immediate family” includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

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). 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 his employer for an additional period of time.

At hearing, claimant testified that he wanted to live in Tucson to be closer to family. Audio Record at 10:45. However, claimant did not assert or show that he quit work due to compelling family reasons as defined under OAR 471-030-0038(1)(e), or for similar reasons that would constitute good cause under OAR 471-030-0038(4). The record instead shows that claimant quit work when he did to move to Tucson to search for other work. However, claimant did not assert or show that his work for the employer was unsuitable under ORS 657.190 or otherwise. We therefore conclude that claimant quit work without good cause under OAR 471-030-0038(5)(b)(A). Claimant is disqualified from the receipt of benefits based on his work separation from the employer.

**DECISION:** Hearing Decision 15-UI-45550 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** November 4, 2015

**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

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<sup>1</sup> In determining whether any work is suitable for an individual, the Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190.

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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