

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1242**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115140). Claimant filed a timely request for hearing. On October 2, 2015, ALJ Shoemake conducted a hearing, and on October 8, 2015 issued Hearing Decision 15-UI-45633, affirming the Department's decision. On October 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and claimant's argument to the extent it was based on the hearing record when reaching this decision.

**FINDINGS OF FACT:** (1) Cascades Surgicenter LLC employed claimant from May 28, 2013 to July 3, 2015 as a registered nurse. Claimant lived and worked in Bend, Oregon.

(2) Claimant's 25-year-old daughter lived with her husband and infant daughter near Shreveport, Louisiana. Claimant's daughter worked while claimant's son-in-law cared for claimant's grandchild. In January 2015, claimant's daughter and son-in-law told claimant the son-in-law needed to return to work as well to avoid losing their home. However, the couple was unable to find affordable daycare for their infant. Claimant's husband told claimant he planned to move to Louisiana to provide daycare for his step-granddaughter.

(3) In April 2015, claimant's 19-year-old son moved to Louisiana to begin a cyber engineering program offered only at Louisiana Tech University. Within a month, claimant's son lost his housing and was unable to find other safe, affordable housing. His sister allowed him to sleep on her couch temporarily to avoid homelessness.

(4) Claimant was financially unable to assist her children while living and paying her mortgage and other expenses in Bend.

(5) In April 2015, claimant and her husband listed their Bend home for sale, and sold it in May 2015. They planned to purchase a home with a lower mortgage so they could afford to pay rent for claimant's son. Claimant had not yet decided if she would move to Louisiana. Claimant was unsure her marriage would remain intact if she did not move to Louisiana with her husband.

(6) In June 2015, claimant took a vacation from work to visit her daughter and son in Shreveport, Louisiana and assess their situations. Claimant, too, was unable to find suitable affordable housing for her son or daycare for her granddaughter in Shreveport. Claimant decided she needed to accompany her husband to Louisiana to assist her children with housing and childcare.

(7) On June 13, 2015, claimant gave notice that she would quit work on July 3, 2015 to move to Louisiana with her husband to preserve her marriage and assist her two children who lived there.

(8) Claimant had a surgery on July 9, 2015, and moved to Louisiana on or about July 15, 2015.

**CONCLUSIONS AND REASONS:** We disagree with the Department and 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 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.

In Hearing Decision 15-UI-45633, the ALJ found claimant quit work "to move closer to family," and that she did not have good cause to quit because she failed to show that her desire to move closer to her adult children amounted to a grave situation.<sup>1</sup> The ALJ mischaracterized claimant's reasons for quitting work. Rather than a personal desire to be closer to her children, claimant's unrefuted testimony was that, at the time she quit work, her husband planned to move to Louisiana to help claimant's son, who faced homelessness, and her daughter, who would lose her house if claimant's son-in-law did not return to work. Claimant also chose to move, in part, to keep her marriage intact. Claimant could not live with her husband if she continued to work for the employer, because he had decided to move to Louisiana. Claimant has shown, by a preponderance of the evidence, that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, whose children were in financial distress and facing homelessness, and whose marriage was at risk, if she did not move to Louisiana, would continue working for the employer for an additional period of time.

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<sup>1</sup> Hearing Decision 15-UI-45633 at 2.

Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 15-UI-45633 is set aside, as outlined above.<sup>2</sup>

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** November 10, 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 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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<sup>2</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.