

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0005**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91533). Claimant filed a timely request for hearing. On December 8, 2015, ALJ Murdock conducted a hearing, and on December 14, 2015 issued Hearing Decision 15-UI-49309, affirming the Department's decision. On January 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which she presented new facts that she did not present during the hearing. Claimant did not explain why she was unable to offer this new information during the hearing or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. For this reason, EAB did not consider the new information in claimant's written argument. EAB considered only information received into evidence during the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Merrill Clinic LLC employed claimant from January 20, 2007 until October 8, 2015, last as a medical transcriptionist. The employer was located in Klamath Falls, Oregon. Claimant lived in Klamath Falls.

(2) Sometime in approximately 2014, claimant's then-boyfriend assaulted her and threatened to kill her if she ever left him. Claimant's ex-boyfriend was later sentenced to prison and his scheduled release date was in March 2016. Claimant expected her ex-boyfriend to return to Klamath Falls when he was released from prison.

(3) Sometime before June 2015, claimant obtained a second job at a hospital in the Klamath Falls area, in addition to that which she had with the employer. The majority of claimant's income came from the job at the hospital.

(4) Sometime before the end of September 2015, claimant learned that her ex-boyfriend was going to be released from prison earlier than expected, in January 2016. Claimant feared her ex-boyfriend. Claimant believed that that to protect the safety of herself and her daughter, she would need to move from the Klamath Falls area before her ex-boyfriend was released from prison. Claimant intended to move somewhere out of the state of Oregon.

(5) In late September 2015, the hospital notified claimant that she was going to be laid off, effective October 4, 2015. Because that would, in essence, cause claimant to lose the majority of her income, she decided to accelerate the date of her out-of-state move. Claimant did not think it was feasible to try to find a second job in Oregon when she would need to leave that job in three months, when her ex-boyfriend was released from prison.

(6) On September 26, 2015, claimant notified the employer that she was leaving work effective October 8, 2015. Claimant left work, Klamath Falls and the state of Oregon because she wanted herself and her daughter to be in a “safe place.” Audio at ~24:56. Claimant and her daughter moved out of state almost immediately after claimant’s last day working for the employer.

**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). ORS 176.176(12)(b) states a claimant may not be disqualified from benefits if she left work in order to protect herself or an immediate family member from domestic violence, stalking or a sexual assault that she reasonably believed would occur as a result of her continued employment. OAR 471-030-0038(1)(e)(A) and OAR 471-030-0038(5)(g), read together, state that leaving work for good cause includes leaving work due to domestic violence which causes a claimant reasonably to believe that her continued employment would jeopardize the safety of herself or a member of her immediate family. The standard for showing good cause is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

In Hearing Decision 15-UI-49309, the ALJ concluded claimant was disqualified from benefits because she did not show good cause for leaving work. In reaching this decision, however, the ALJ did not apply ORS 657.176(12) or consider that claimant's primary motivation for moving included her fear that her safety, and that of her child, would be jeopardized if she continued to live in Klamath Falls when her ex-boyfriend was released from prison. Hearing Decision 15-UI-29309 at 2-3.

Claimant’s testimony was very clear that she left work for a single reason: she feared for her own safety and that of her daughter if they remained in Oregon after her ex-boyfriend was released from prison. Audio at ~10:04, ~16:48, ~24:56. Claimant’s concerns were based on her ex-boyfriend’s prior domestic assault of her and his threat to kill her if she ever left him. Audio at ~ 10:04. On the record as it exists, claimant’s belief that her own or her daughter’s physical safety would be jeopardized if they remained in the Klamath Falls area or in Oregon was reasonable. Although claimant left work approximately three months before her ex-boyfriend’s release, the reason that she accelerated her leaving date, the loss of a

significant part of her income when she was laid off from the hospital, was reasonable, beyond her control and did not undercut the credibility of her contention that she left work based on domestic violence and safety concerns. Based on ORS 657.176(12)(b), OAR 471-030-0039(1)(e)(A) and OAR 471-030-0038(5)(g), this is sufficient to show that claimant had good cause for leaving work when she did.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-49309 is set aside, as outlined above.<sup>1</sup>

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 28, 2016**

**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>1</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.