

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0069**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed without good cause to accept suitable work when offered by the employer (decision # 155653). Claimant filed a timely request for hearing. On December 29, 2015, ALJ Murdock conducted a hearing at which the employer failed to appear, and on December 30, 2015 issued Hearing Decision 15-UI-50222, affirming the Department's decision. On January 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The employer offered claimant data entry work starting Monday, August 31, 2015. The offered work required claimant to work with his cousin, an information technology employee.

(2) During the weekend prior to August 31, 2015, claimant was involved in a physical altercation with his cousin. Claimant's cousin also threatened him, stating, "I don't want to see you at this job. If I see you at this job, I'm going to cause problems for you." Audio Record at 12:45. Claimant did not report the physical altercation to the police because he did not want to get his cousin, who had a family, including a young child, in trouble.

(3) Claimant knew his cousin could not control his temper, and determined that his cousin would verbally abuse, threaten, or physically assault claimant at work. Claimant therefore refused the employer's job offer.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant had good cause for refusing to accept work when offered by the employer.

ORS 657.176(2)(e) provides that an individual shall be disqualified from the receipt of benefits if the individual failed without good cause to accept suitable work when offered. Good cause as used in ORS 657.176(2)(e) is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to accept suitable work when offered by the employer. OAR 471-030-0038(6) (August 3, 2011).

In Hearing Decision 15-UI-50222, the ALJ concluded that claimant failed without good cause to accept the employer's job offer because his altercation with his cousin was not serious enough to involve law enforcement, and his "suspicions" that his cousin would continue to "cause him problems at work" were not such that a reasonable and prudent person exercising ordinary common sense would have refused the job offer.<sup>1</sup> The ALJ asserted that such a person would accept the employer's job offer, attempt to work with his cousin, and report any problems the cousin actually caused to the appropriate authorities.<sup>2</sup>

As noted by the ALJ, however, claimant did not involve law enforcement out of concern for his cousin's family, which included a young child, and not because the altercation was not serious.<sup>3</sup> Claimant did not merely have "suspicions" that his cousin would continue to "cause him problems at work." He determined, based on recent experience and the knowledge that his cousin could not control his temper, that his cousin would verbally abuse, threaten, or physically assault him. The record fails to show otherwise. No reasonable and prudent person, exercising ordinary common sense, would accept a job offer when such behavior is likely to occur. Claimant therefore had good cause to refuse the employer's offer of work, and is not disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 15-UI-50222 is set aside, as outlined above.<sup>4</sup>

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** February 2, 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> Hearing Decision 15-UI-50222 at 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1.

<sup>4</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.