

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0584

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 141304). Claimant filed a timely request for hearing. On April 11, 2016 and April 21, 2016, ALJ M. Davis conducted a hearing, and on April 27, 2016 issued Hearing Decision 16-UI-58272, affirming the Department's decision. On May 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) C&C Drywall, Inc. employed claimant as a carpenter from June 22, 2015 to February 15, 2016.

(2) At all relevant times, claimant resided in Chiloquin, Oregon. The employer did not have work for claimant in or around Chiloquin. Claimant initially decided to take the job because he believed that the employer could assign him to work in Klamath Falls, Oregon, located less than 30 miles from his home, but he agreed to travel to other cities to work. The employer assigned claimant to jobs in other cities. Claimant was required to travel to those cities for work. Claimant had to initially pay the cost of his travel and lodging expenses, and the employer later reimbursed him for travel expenses in accordance with claimant's union's rules and requirements.

(3) Claimant's job assignments were typically located too far from claimant's residence for claimant to commute to work. Claimant did not have the funds to support himself living in different cities, and the amount of money he was reimbursed did not match his expenditures. As a result, claimant had to live in his vehicle in order to live in the cities where the employer assigned him to work.

(4) The last assignment claimant accepted with the employer was in Ashland, Oregon. Ashland, Oregon was located 89.7 miles from Chiloquin, which typically took 1 hour 56 miles to drive.¹ During that

¹ We take notice of this generally cognizable fact. See <https://www.mapquest.com/directions/from/us/oregon/chiloquin-282030076/to/us/oregon/ashland-282040158/>. Any party that objects to our doing so must submit such 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.

assignment, claimant had to sleep in his car for approximately one and one-half weeks because he lacked the money to pay for a motel room or other temporary residence.

(5) On February 11, 2016, the employer's president notified claimant that the employer was required to begin garnishing his paycheck. Claimant felt upset that his paycheck would be garnished because it would reduce his net pay further, when he already had difficulty meeting his expenses and could not afford a temporary residence while working. The president notified claimant that his next assignment would begin on February 15, 2016 in Canyonville, Oregon. Canyonville, Oregon was located 126.7 miles away from Chiloquin, and typically took 2 hours 46 minutes to drive.²

(6) Although claimant had initially accepted the assignment in Canyonville, he did not report to the job assignment on February 15, 2016. When the president called claimant to ask why he did not report to the job, claimant said he had quit.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant quit work with 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). "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 his employer for an additional period of time.

As a preliminary matter, we disagree with the ALJ's credibility determination. The ALJ considered the employer's evidence more credible than claimant's, writing,

While claimant testified that he quit work because he could not afford to continue working out of town for the employer, that testimony was not persuasive. The president testified that claimant was very upset when he learned that his pay was going to be garnished and that he did not report for work on February 15, 2016, as a result of the garnishment. The employer's testimony was more persuasive than claimant's because it was logical and consistent. Thus, the evidence is persuasive that claimant voluntarily quit work because he found out that his paychecks would be garnished.

Hearing Decision 16-UI-58272 at 2. Although the ALJ characterized the employer's testimony as "logical and consistent," the ALJ did not explain in what manner claimant's testimony was either

² We take notice of this generally cognizable fact. See <https://www.mapquest.com/directions/from/us/oregon/chiloquin-282030076/to/us/oregon/canyonville-282032715>. Any party that objects to our doing so must submit such 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.

illogical or inconsistent. Nor did the ALJ identify how it was inconsistent for claimant, an individual who said he was unable to afford working out of town, to quit work for that reason when he learned that his wages would be reduced by a garnishment, making it even more difficult for claimant to pay his work-related travel expenses. With respect to the logic and consistency of claimant's testimony, it is notable that claimant attempted to submit 26 pages of documentary evidence, including narration and pay records, all of which were consistent with his testimony at the hearing. Although the ALJ excluded the documents from evidence based on the employer's failure to receive them, and, therefore, we did not consider the content of the documents when reaching our decision in this matter, the documents corroborate claimant's testimony and support a finding that claimant provided credible and earnest testimony about the situation that caused him to quit work.³ With respect to the relative credibility of the parties, it is also notable that claimant displayed an even temper and demeanor during the hearing and used a respectful tone when addressing the ALJ and the employer's witness, while the employer's witness displayed argumentative and combative behavior and was disrespectful to the parties. Evaluating the parties' testimony and conduct during the hearing, we conclude that the record, viewed as a whole, does not support a finding that either party was less credible than the other. Claimant's logical and consistent testimony is entitled to be considered with the same weight as the employer's.

The ALJ concluded that claimant quit work because of the garnishment, and not because he could not afford to work out of town for the employer.⁴ The ALJ reasoned that, "[w]hile claimant may have been frustrated about having his wages garnished, he failed to establish how this created a grave situation for him or that he pursued any alternatives prior to quitting work."⁵ We disagree. Claimant did not quit solely because of the garnishment, and he did not quit because he merely feel frustrated about his wages or reimbursement for travel expenses. He was, even before the garnishment, unable to meet his basic expenses while traveling for work, which meant he was unable to pay for a place to live while traveling to work, and, as a result, had to live in his car in order to continue working for the employer. When an individual establishes that they have to live in a vehicle in order to work, without access to hygiene and sanitation facilities, and without the means of paying for a habitable residence, the individual has established the existence of a grave situation. That claimant's wages were then subject to a garnishment merely added to the gravity of his already grave situation.

Claimant did not have any reasonable alternatives to leaving work. The employer did not have any work for him within commuting distance of his residence in Chiloquin, he had to initially pay for his travel expenses out of pocket and lacked the money to do so, and the reimbursement he received, although paid in accordance with his union's rules and requirements, was inadequate to reimburse him for his actual expenses or to give him enough money to be able to pay his work-related travel expenses for the next job. Regardless whether or not claimant's wages were subject to garnishment, his inability to

³ The ALJ wrote in her decision that Exhibit 1 was excluded because "it was not provided to the employer." See Hearing Decision 16-UI-58272 at 1. However, claimant averred at the hearing that he did, in fact, provide the documents to the employer via the Department or Office of Administrative Hearings; the record only shows that the employer said he did not receive them. Therefore, while the record may support a finding that the employer did not receive the documents, it does not support a finding that they were not provided.

⁴ Hearing Decision 16-UI-58272 at 2.

⁵ *Id.*

support himself while traveling for work to the extent that he was homeless during his work assignments created a grave situation for claimant, under which no reasonable and prudent person would have continued to work in that job for an additional period of time.

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

DECISION: Hearing Decision 16-UI-58272 is set aside, as outlined above.⁶

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

DATE of Service: June 20, 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. 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

⁶ 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.