

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0713**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 141356). Claimant filed a timely request for hearing. On June 3, 2016, ALJ Vincent conducted a hearing, and on June 10, 2016 issued Hearing Decision 16-UI-61551, concluding claimant voluntarily left work with good cause. On June 16, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

Hearing Decision 16-UI-61551 erroneously states that no exhibits were offered or entered into evidence at hearing. However, the ALJ admitted to the record documents marked as Exhibit 1 at hearing. Audio Record at 5:50 to 6:31. We considered the employer's written argument and the entire hearing record, including Exhibit 1, when reaching this decision.

**FINDINGS OF FACT:** (1) SSOE Inc. employed claimant from January 1, 2013 to March 18, 2016 as a document control person.

(2) Claimant understood at hire that she would work overtime, and usually did work overtime. Claimant worked Monday through Friday, and had weekends off from work. Sometimes claimant worked 6 to 12 hours of overtime per week, which claimant did not find excessive. She would, however, sometimes work additional overtime due to the demands of the employer's projects.

(3) Due to staff changes and the deadlines for a new project, claimant began working additional overtime in October 2015. Claimant considered her overtime hours then to be excessive, especially when she worked 15 or more overtime hours per week. She felt "exhausted" at the end of the work week. Transcript at 9. Claimant worked an average of 15 or more hours of overtime per week during the two-week pay periods paid on February 25 (33.5 hours) and March 24, 2016 (36.25 hours), and almost 15 hours per week for the pay period paid on January 28, 2016 (29.5 hours). Claimant worked less overtime during some pay periods between October 2015 and March 2016 due to holidays or time claimant took off from work.

(4) Claimant's husband had congenital heart failure. In January 2016, claimant asked her employer about family medical leave when her husband's condition worsened. The employer gave claimant information about its medical leave policy and the forms to request leave. Claimant did not take leave because her husband's health improved and he returned to work part time. Transcript at 10. He later returned to full time work.

(5) Claimant was not willing to continue to work the increased overtime because she wanted to spend more time at home with her husband and felt too tired at the end of the week to fully enjoy her weekends.

(6) On March 18, 2016, claimant voluntarily left work because she did not want to continue working so much overtime.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude claimant voluntarily left work without 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). Quitting work with good cause includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g) (August 3, 2011). OAR 471-030-0038(1)(e)(B) provides, in relevant part, that "compelling family reasons" means 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. 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 her employer for an additional period of time.

Claimant left work because she was dissatisfied with the number of overtime hours she had to work to meet the employer's deadlines. The ALJ concluded that claimant had good cause to leave work when she did because she left work for "objectively grave reasons." Hearing Decision 16-UI-61551 at 2. It is undisputed that claimant worked some overtime every week, sometimes as many as 18 hours, and that claimant was "exhausted" at the end of those work weeks. However, we disagree that claimant has met her burden to show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

The ALJ found that the number of hours claimant worked was "so unreasonably excessive" that it was an "objectively grave reason" to leave work. *Id.* However, the employer told claimant at hire that she would be required to work overtime, claimant had been willing and able to do so in the past, and did not find 6 to 12 hours overtime per week to be excessive. Although claimant had several weeks working 15 or more hours of overtime from October 2015 until she quit, she also took holidays and other time off during those busy months. Moreover, claimant did not show that the number of overtime hours she was

working when she quit was likely to continue indefinitely. The record shows that the overtime hours were likely to decrease when the employer completed its project.

The ALJ also found that the overtime claimant worked “was having a detrimental impact on [claimant’s] health and well-being.” *Id.* The record does not support the ALJ’s conclusion. There is no evidence to show that claimant’s work schedule caused her to experience physical or mental health problems such that her desire to improve her “work/life balance” or to avoid feeling “exhausted” on Fridays after work created a grave situation for her. Similarly, although her husband had congenital heart failure, the record does not show that his illness necessitated care by claimant or that the employer would not accommodate claimant’s request for time off if claimant needed to care for him. Claimant’s husband had returned to full time work, and the employer appeared willing to accommodate claimant’s need for time off when her husband was ill in January 2016.

Claimant also asserted that she did not have time to look for other work. Transcript at 6. Claimant did not show that the lack of time to look for other work created a grave situation for her. Moreover, as the employer asserted in its written argument, claimant testified she had an interview with another employer before she quit, and that some employers were willing to conduct interviews before she began her shift at work. Transcript at 6-7. Based on claimant’s own testimony, it does not appear the hours she worked obstructed her from interviewing for other work to such an extent that it was a grave reason to leave work.

Absent evidence that claimant faced a grave situation at work without reasonable alternatives to quitting, we cannot find that claimant quit work with good cause. Claimant quit work without good cause and is disqualified from the receipt of unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-61551 is set aside, as outlined above.

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

**DATE of Service: July 26, 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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