

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0734

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114611). Claimant filed a timely request for hearing. On June 9, 2016, ALJ Menegat conducted a hearing, and on June 15, 2016 issued Hearing Decision 16-UI-61780, affirming the Department's decision. On June 21, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Now Fusion – EMS employed claimant as an electronics assembler from February 8, 2013 to March 31, 2016.

(2) When claimant began working for the employer, she and her husband lived in Hillsboro, Oregon. They owned a home on 1.6 acres of land in a rural area. In summer 2015, claimant learned that the area in which she lived was going to be developed.

(3) Claimant was approached by the developers. Although she was initially unwilling to sell her property, she met with the developers and some of the project designers and learned that she was likely to lose a significant amount of her property to accommodate a road to the new development that was expected to be built approximately 8 feet from the front door of her house. She learned that her area was going to be annexed into the city, and that her property could become subject to a homeowner's association. Claimant understood that her home, built in the 1930s, was not capable of complying with the homeowner's association rules. Claimant understood from what she was told that the development of the area and annexation was likely to substantially reduce the value of her home and property.

(4) Claimant and her husband decided that they needed to sell their home in order to avoid suffering a significant financial loss and other problems related to the annexation plans. Claimant consulted with a real estate agent and looked for a new residence in the Hillsboro area that would allow her to stay within commuting distance of her job, but she was unable to afford to buy a home in that area. On October 1, 2015, after several months of searching, claimant and her husband purchased a new home in Sheridan, Oregon. Claimant's new home was located approximately 45 miles from the employer's business, and,

in light traffic conditions, it generally took her approximately 1 hour 15 minutes to drive from her home to her job.¹

(5) The developer that purchased claimant's Hillsboro residence did not plan to demolish or develop her property until sometime after April 15, 2016. The developer agreed to allow claimant to continue residing in the Hillsboro residence on the condition that and her family completely vacate the house by April 15, 2016. After reaching that agreement, claimant regularly stayed in the Hillsboro residence to avoid having a long-distance commute to work.

(6) Claimant was concerned about continuing to work for the employer after the sale of her home. Although she was able to stay in her Hillsboro residence for approximately five months after selling it, she had difficulty affording the commuting costs between Hillsboro and Sheridan she would eventually have to pay on a regular basis, she had impaired night vision that affected her driving, and she was concerned about driving the long distance at night and during inclement weather. In early 2016, claimant's husband experienced health problems that left him unable to work, and claimant was concerned about continuing to work over an hour away from him because she would be unable to get to him quickly enough if he experienced a medical emergency.

(7) Claimant sought work near her Sheridan home, and applied for work wherever she could. She was unable to find a new job. Claimant asked the employer to allow her to alter her work schedule, for example, to allow her to maintain her hours but work fewer days each week to minimize the frequency of her commute to work. The employer did not agree to claimant's request.

(8) Claimant continued working for the employer as long as she could continue living part time in Hillsboro, while seeking options that would allow her to either remain employed or transition into another job without experiencing unemployment. By February 2016, however, claimant concluded that she was out of options and would soon have to vacate the Hillsboro residence, live in Sheridan full time, and quit her job.

(9) On March 17, 2016, claimant notified the employer of her intent to quit work at the end of the month. Effective March 31, 2016, claimant quit work.

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 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

¹ We take notice of this generally cognizable fact, obtained through the "Mapquest.com" website at <https://www.mapquest.com/directions/from/us/or/sheridan/97378/11531-sw-dupee-valley-rd-45.175915,-123.371983/to/us/or/hillsboro/97124/%5B21400-21599%5D-nw-nicholas-ct-45.531927,-122.897397>. 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.

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.

The ALJ concluded that claimant quit work for a number of reasons, each of which "could be a reasonable basis for leaving work if attributable to employer," but that claimant did not have good cause to quit work because the factors "were attributable to claimant because of her decision to sell her Hillsboro home and move."² The ALJ reasoned that, although claimant "was almost forced to move from her Hillsboro home," it was based on her "personal economic conditions and is attributable to claimant," so claimant "created the grave situation that caused her to leave work with employer" and did not have good cause to quit work.³ The ALJ concluded that claimant had reasonable alternatives to creating her grave situation, including remaining in her Hillsboro home or selecting a home closer to work, "had her priority been to remain employed with employer."⁴

As a preliminary note, we disagree with the ALJ that the fact that claimant quit work for personal reasons attributable to her own actions, instead of the employer's, was relevant to or determinative of the good cause analysis. ORS 657.176 and OAR 471-030-0038 do not contain any provisions restricting the definition of "good cause" to conditions caused by the employer, and Oregon courts have long held that an individual may have good cause to quit work due to personal reasons that do not involve the employer. *See e.g. Sothras v Employment Div.*, 48 Or App 69, 616 P2d 524 (1980) (an employee who was the victim of a violent crime by an unidentified and at-large assailant and could not continue to live in the area where the crime had occurred had good cause to quit work for purely personal reasons without being disqualified from receiving unemployment insurance benefits).

Although we agree with the ALJ that claimant created the gravity of her own situation by choosing to move to a distance from which she was not willing to commute to work on an ongoing basis, we disagree with the ALJ's conclusion that she did not show good cause for quitting work under the circumstances. OAR 471-030-0038(5)(f) provides that "[w]here the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of section (4) of this rule." As recited above, OAR 471-030-0038(4) defines "good cause" as such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to quit work under the circumstances. Considered together, that means good cause exists when a reasonable and prudent person, experiencing a situation similar to that claimant faced, would, more likely than not, also have concluded she had no reasonable alternative but to create the grave situation that ultimately necessitated she quit work.

At the time claimant created the gravity of this situation, she was facing circumstances outside her reasonable control, including development of her neighborhood, a road that was to be built 8 feet from

² Hearing Decision 16-UI-61780 at 4.

³ *Id.*

⁴ *Id.*

her front door, annexation into a city, a likelihood that her house would fall within the boundaries of a homeowner's association whose requirements her home could not meet, and a significant financial loss due to the diminishing value of her home due to those circumstances. Although claimant did not want to sell her home, given the circumstances, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would, more likely than not, have made the same decision claimant did when she decided to sell her home. No reasonable and prudent person under the circumstances described would have chosen to "remain[] in her Hillsboro home."

Although claimant might have diminished the gravity of her situation, as the ALJ suggested, by "selecting a home closer to work," this record fails to show that claimant had an opportunity to do so. Claimant used the services of a real estate agent who, time and again, tried and failed to find a residence in the Hillsboro area that was within claimant's budget. Claimant selected the home in Sheridan, instead of finding one in Hillsboro, because that was the house that suited her needs and budget at the time. There is no evidence in this record that another suitable home was available to claimant within a reasonable commuting distance of the employer's business. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would, likely, conclude as claimant did that purchasing the house in Sheridan was the most reasonable option, even though she might have preferred to "select[] a home closer to work."

It is also notable that claimant tried to minimize the effect of her decision to sell her Hillsboro house on her ability to remain employed. Claimant made an agreement with the developer that purchased her home that allowed her to continue living in the home for a five-month period after the sale, since the commute was too onerous for her to do on a daily basis, which allowed her to extend her employment by a five-month period during which she sought other options that might allow her to remain employed. She asked the employer to alter her schedule and tried to find another job. She only decided to quit work after those efforts failed, she lost her ability to continue living in her Hillsboro residence, and her husband experienced health problems that made it even more problematic for claimant to work so far away from her residence. Under these circumstances, we conclude that claimant acted as a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, with respect to the sale of her home and, ultimately, exhausted all reasonable known alternatives before quitting work. Claimant established that she had good cause for creating the gravity of her situation and quitting work, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-61780 is set aside, as outlined above.

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

DATE of Service: July 27, 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.