

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1137**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 113659). Claimant filed a timely request for hearing. On September 22, 2016, ALJ Vincent conducted a hearing, and on September 27, 2016 issued Hearing Decision 16-UI-68161, affirming the Department's decision. On October 6, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument with his application for review but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) River City RV's employed claimant as a service writer from September 2, 2014 to June 17, 2016.

(2) When claimant started working for the employer, he had suffered from chronic and worsening bilateral lower back pain with right-sided sciatica and bilateral lower extremity pain, numbness, tingling and feeling of heaviness in his legs for approximately 6 to 8 years. For the first five months of his employment, the employer did not require him to work weekends or much overtime, and claimant was physically capable of performing his duties despite his physical impairments.

(3) In early 2015, however, the employer started requiring claimant to work more overtime, including evenings and weekends. By early 2016, claimant determined that he was incapable of working the amount of hours required by the employer due to pain related to his physical impairments. In February 2016, claimant's domestic partner suffered a stroke, requiring claimant to bathe, feed and otherwise care for her. Claimant repeatedly informed the employer that, due to his physical impairments and the need

to care for his domestic partner, he did not think he could continue working for the employer if it continued requiring him to work overtime, including evenings and weekends. The employer continued requiring claimant to work overtime, including evenings and weekends.

(4) Due to his physical impairments, claimant was scheduled to undergo surgery on his right foot on May 13, 2016. On May 12, 2016, claimant notified the employer that he wanted to quit work, effective immediately. The employer asked claimant to give the employer two weeks' written notice of his intent to quit work. On May 20, 2016, claimant returned to work after his surgery and notified the employer in writing that he was quitting, effective June 3, 2016. The employer offered to increase claimant's rate of pay, but not to reduce his hours. At the employer's request, claimant continued working until June 17, 2016 to allow the employer time to replace claimant.

(5) Claimant quit work because the employer continued to require him to work overtime, including evenings and weekends, despite claimant's physical impairments and the need to care for his domestic partner.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant quit working for the employer 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). Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons, including the illness or disability of the individual's domestic partner necessitating care by another and the individual's employer does not accommodate the employee's request for time off. OAR 471-030-0038(5)(g), OAR 471-030-0038(1) (e) and (f). 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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had chronic and worsening bilateral lower back pain with right-sided sciatica and bilateral lower extremity pain, numbness, tingling and feeling of heaviness in his legs, permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

In Hearing Decision 16-UI-68161, the ALJ found that claimant quit work because he believed his duties at work were causing pain in his leg and foot, determined that it would be best to quit his job to reduce his pain, but did not explore alternatives to leaving work such as taking time off from work, reducing his hours or taking a medical leave of absence.<sup>1</sup> Based on those findings, the ALJ concluded that claimant quit work without good cause under OAR 471-030-0038(4) because a reasonable and prudent person with claimant's injuries would not leave his job under those circumstances without first seeking out alternatives such as a leave of absence for medical reasons or reduced hours, and claimant's willingness

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<sup>1</sup> Hearing Decision 16-UI-68161 at 1.

to continue working for the employer while it searched for a replacement indicated that claimant could have continue working for the employer for longer than he did.<sup>2</sup> The ALJ did not address whether claimant quit work due to compelling family reasons, and therefore good cause, under OAR 471-030-0038(5)(g).

Contrary to the ALJ's findings, however, the record shows that claimant quit work because the employer continued to require him to work overtime, including evenings and weekends, despite claimant's physical impairments *and* his need to care for his domestic partner, who had suffered a stroke. In addition, it is undisputed that claimant repeatedly informed the employer that due, in part, to the need to care for his domestic partner, he did not think he could continue working for the employer if it continued requiring him to work overtime, including evenings and weekends. It also is undisputed that the employer continued to require claimant to work overtime, including evenings and weekends. The record therefore shows that claimant effectively requested time off from work, in part, to care for his domestic partner, and the employer did not accommodate his request. Thus, to the extent claimant quit work to care for his domestic partner, the record shows that he quit work for compelling family reasons, and therefore good cause, under OAR 471-030-0038(5)(g).

In addition, even if we determined that claimant's repeated assertions to the employer that he did not think he could continue working for the employer if it continued requiring him to work overtime, including evenings and weekends, did not constitute a "request for time off," our decision would remain the same. OAR 471-030-0038(5)(g) specifically states that quitting work with good cause includes, *but is not limited to*, quitting work due to compelling family reasons. Claimant's need to care for his domestic partner therefore is relevant to whether he had good cause to quit work under OAR 471-030-0038(4). Claimant repeatedly informed the employer that, due to his physical impairments and the need to care for his domestic partner, he did not think he could continue working for the employer if it continued requiring him to work overtime, including evenings and weekends. The employer continued requiring claimant to work overtime, including evenings and weekends. After claimant notified the employer he was quitting work, the employer offered to increase his rate of pay, but not to reduce his hours. Even we assumed that claimant could have taken a medical leave of absence, the record fails to show that it would have been paid, of sufficient duration, or that the employer would have allowed claimant to take evenings and weekends off, or otherwise reduce his hours, when he returned.

Finally, the mere fact that claimant accommodated the employer's request that he work an additional two weeks while the employer searched for a replacement is not material to whether claimant had good cause to quit work when he did. No reasonable and prudent person with claimant's physical impairments would continue working for an employer that continued to require him to work overtime, including evenings and weekends, despite the pain it caused him, and its interference with his ability to care for his domestic partner after she suffered a stroke. Claimant therefore had good cause to quit work under OAR 471-030-0038(4).

In sum, claimant had good to quit work under OAR 471-030-0038(5)(g) and, alternatively, OAR 471-030-0038(4). He therefore is not disqualified from receiving benefits based on his work separation from the employer.

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<sup>2</sup> *Id.* at 3.

**DECISION:** Hearing Decision 16-UI-68161 is set aside, as outlined above.<sup>3</sup>

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

**DATE of Service: October 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>3</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.