

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1387**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 90923). Claimant filed a timely request for hearing. On November 16, 2016, ALJ Wipperman conducted a hearing, and on November 21, 2016 issued Hearing Decision 16-UI-71533, concluding that claimant voluntarily left work with good cause. On December 12, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted a written argument that offered new information that was not presented during the hearing. The employer did not explain why it was unable to offer this new information at the hearing or show that factors or circumstances beyond its reasonable control prevented it from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the employer's new information. EAB considered only information received into evidence during the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Wy'east Medical Corporation employed claimant as its chief financial officer from July 28, 2014 until September 1, 2016.

(2) In August 2016, claimant's mother-in-law was diagnosed with appendiceal carcinoma. That cancer was very serious. At that time, claimant's mother-in-law and her husband were planning to move to Idaho, and they decided to move despite her condition.

(3) After her mother's diagnosis, claimant's wife wanted to assist her sister and her mother's husband in caring for her mother in Idaho during her illness. Claimant and his wife decided to move to Idaho, which would enable them both to be with her mother.

(4) On August 22, 2016, claimant told the employer's president, among other things, that he needed to move to Idaho because of the illness of his mother-in-law. Claimant told the president that he was willing to continue to work for the employer remotely from Idaho, and occasionally report to the

employer's work location in Oregon, as needed. Claimant also told the president that he was willing to continue working for the employer at a reduced salary if it could accommodate him. The president told claimant that it was not feasible for him to work remotely. Claimant then notified the president that September 1, 2016 would be his last day of work.

(5) On September 1, 2016, claimant voluntarily left work.

(6) In October 2016, it was determined that the cancer of claimant's mother-in-law was inoperable and that she likely would not survive longer than one year.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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). Leaving work for good cause includes but is not limited to leaving work for compelling family reasons. OAR 471-030-0038(5)(g). The standard for determining good cause 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.

While it would be good cause for claimant to leave work for "compelling family reasons," such reasons as they would apply under claimant's circumstances would include if he needed to move to Idaho to provide care for an ill or disabled immediate family member or if he needed to relocate to Idaho because the location of his wife's employment had changed. OAR 471-030-0038(1)(e)(B) and (C). Neither applies to claimant's decision to leave work. However "compelling family reasons" is not the exclusive means by which claimant may show good cause for leaving work, and he will not be disqualified from benefits if he demonstrates that a reasonable and prudent person would consider his situation grave and would have left work under the circumstances that he did. *See* OAR 471-030-0038(4).

The employer did not dispute that claimant's mother-in-law was gravely ill or that claimant's wife wanted to move to Idaho so she could care for her mother during her final illness. On these undisputed facts, it was shown that a reasonable and prudent person in claimant's circumstances likely would have quit work and moved with his wife to Idaho to enable her to provide care for her seriously ill mother. This is particularly so when claimant did what he could to maintain his employment by offering to work remotely for the employer and at a reduced salary, but the employer refused to accommodate him. A reasonable and prudent person likely would have left work under the circumstances that claimant did.

Claimant showed good cause for leaving work when he did. He is not disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

**DECISION:** Hearing Decision 16-UI-71533 is affirmed.

J. S. Cromwell and D. P. Hettle;

Susan Rossiter, not participating.

**DATE of Service: January 19, 2017**

**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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