

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1428**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 150641). The employer filed a timely request for hearing. On December 7, 2016, ALJ M. Davis conducted a hearing and issued Hearing Decision 16-UI-72455, affirming the Department's decision. On December 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument and the entire hearing record.

**FINDINGS OF FACT:** (1) O'Reilly Auto Parts employed claimant as a delivery specialist from March 12, 2015 until October 13, 2016.

(2) Claimant lived in Hermiston, Oregon. Before March 23, 2016, claimant worked full time at the employer's store in Hermiston, Oregon.

(3) On March 23, 2016, pursuant to her doctor's orders, claimant went on a medical leave of absence due to her pregnancy. Claimant gave birth on June 30, 2016 and began an additional leave from work due to the birth of her child.

(4) Claimant's doctor released her to work on September 8, 2016. In September 2016, the employer eliminated claimant's position at the Hermiston store due to a seasonal downturn in business. The employer had another employee quit at the Hermiston store, but did not refill that position, also due to business reasons.

(5) On October 3, 2016, the employer offered claimant the only position it had available at that time, located in its Pendleton store, 31 miles from claimant's home. It took claimant 30 or 35 minutes to travel from her home to the Pendleton store. The Pendleton position was a part time position, 5 to 6.25

hours per day, four days per week. Claimant earned \$10.30 per hour. It cost claimant \$20 per day to travel to and from Pendleton. Claimant's childcare costs for work were \$20 per day.

(6) On October 13, 2016, claimant told the employer she quit work because she considered Pendleton too far to drive for work based on her travel time, costs to work, and potential earnings.

**CONCLUSIONS AND REASONS:** We disagree with the Department and ALJ. 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). "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 her employer for an additional period of time.

Claimant left work because she concluded that, with the time and expense of her commute and childcare costs, she did not earn enough to justify her continued employment. Claimant's situation was analogous to an hourly employee who quits due to a reduction in hours. OAR 471-030-0038(5)(e) (August 3, 2011) provides that if an individual quits work due to a reduction in hours, she has quit work without good cause unless the cost of working for the employer exceeds the amount of remuneration received or continuing to work substantially interferes with her return to full time work.

Claimant was to work a minimum of 5, and maximum of 6.25, hours per day. She would have earned at least \$51.50, and as much as \$64.37, per day. Thus, claimant's earnings per day would have been more than her costs of \$40 per day for transportation and childcare. Moreover, the record does not show that continuing to work substantially interfered with claimant's return to full time work, that claimant had other costs to work, or that her commuting time was unreasonable or created a grave situation for claimant due to her or her infant's health or other factors. Absent such a showing, claimant failed to establish that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant had the burden to show that she quit work when she did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet her burden and is disqualified from the receipt of unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-72455 is set aside, as outlined above.

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

**DATE of Service:** January 18, 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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