

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0323**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83838). Claimant filed a timely request for hearing. On March 9, 2017, ALJ Seideman conducted a hearing, and on March 10, 2017 issued Hearing Decision 17-UI-78622, affirming the Department's decision. On March 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Reve Exteriors employed claimant from January 2, 2017 to January 4, 2017.

(2) The employer was a home improvement business; it hired claimant to work as a door-to-door canvasser and appointment setter. The employer drove claimant to a particular neighborhood, dropped him off, and left him there to canvas from approximately 11:30 a.m. to 8:00 p.m. The job required claimant to remain outdoors for his entire shift.

(3) On January 2, January 3 and January 4, the region experienced an "ice storm that locked the city for ten days." Audio recording at 24:00. Claimant had to walk in the street because the sidewalks were icy and unsafe, and because half his shift was after dusk he had to do so in the dark which made him feel invisible to traffic and at a high risk of being hit by a car. The temperature was in the teens; he experienced wind gusts up to 40 miles per hour and felt "hypothermic." Written argument, page 1.

(4) The employer sometimes called its canvassers off work when it considered weather or road conditions too hazardous or unsafe but did not suspend canvassing between January 2<sup>nd</sup> and January 4<sup>th</sup>. The employer considered the job "strictly an outdoors canvassing position" that required employees to be outside in various weather conditions. Audio recording at 22:25.

(5) Working outdoors in those conditions posed a risk to claimant's health and safety. He decided to quit work, and left in the middle of his January 4, 2017 shift.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that 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). "Where 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 . . ." OAR 471-030-0038(5)(f). 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 his employer for an additional period of time.

The ALJ concluded that claimant quit without good cause, reasoning that despite claimant's concerns about his safety and health, his "situation was not so grave that he didn't have any reasonable alternative but to leave work." Hearing Decision 17-UI-78622 at 2. The ALJ reasoned that claimant "could have talked to employer to perhaps delay his activity pending a change in the weather" or "could have realized when he took the job that the weather was present or coming." *Id.* We disagree.

To the extent the ALJ determined claimant quit work without good cause because he should not have accepted the job in the first place, claimant might have created the gravity of his situation by accepting the job, but had good cause for doing so. Claimant took the job because, after losing his job as a licensed health care agent, he felt panicked and in need of a new job. He was concerned about being unemployed, wanted to work as soon as possible, and felt he was required to accept the job offer even though he felt the work was unsuitable based on his understanding of the unemployment insurance regulations. Audio recording at ~ 18:00. Claimant's actions in taking the job were consistent with those of a reasonable and prudent person trying to return to work and minimize his period of unemployment; he therefore had good cause for creating the gravity of the situation.

To the extent the ALJ denied benefits because claimant could have spoken with the employer about his concerns, although in most circumstances we have held that claimants must notify the employer of objectionable working conditions and give the employer the opportunity to resolve the problem prior to quitting to show good cause, it would have been futile to do that in these circumstances. The employer could not change the weather, nor could the employer change the fact that being outside in the weather was necessary to accomplish the task of door-to-door canvassing. Although the employer sometimes decided to suspend canvassing when weather or other conditions were too hazardous and unsafe, it apparently did not consider an eight-hour shift outdoors during an ice storm, 40 mile per hour wind gusts, temperatures in the teens, and conditions that necessitated claimant walk in the roads after dark too hazardous. The employer's witness testified, the job was a "strictly an outdoors canvassing position" and, as such, employees had to be outside in various weather conditions; likewise, claimant did not think it would change anything to speak with the employer because "[i]t seems that in this line of

work it's either you do it or you do not fit in." Audio recording at ~ 17:35. Given those statements, the record shows it is more likely than not that speaking with the employer about the conditions – which were hazardous but apparently inherent to that sort of job – would have been futile and would not have resulted in any changes to his job, assignment or schedule. Moreover, the weather conditions in the Portland-Vancouver metro area during the 2016-2017 season were uncommonly extreme and involved significant and repeated periods of snow and ice affecting the area, including the ice storm claimant mentioned that lasted for a protracted period.<sup>1</sup> Given those conditions, it is unlikely that delaying canvassing activities until the weather changed was an option for claimant, and, even if the employer had agreed he could do so, given the severity and duration of severe winter weather conditions, it would likely have subjected claimant to a protracted unpaid period of leave. It is not reasonable to expect an individual to undertake a protracted unpaid period off work, particularly from a job he considered hazardous to his health and safety, in order to remain qualified for unemployment benefits.

The conditions under which claimant was required to perform his job included severe winter weather, with associated hazards such as ice, wind chill, traffic hazards and feeling “hypothermic” while outside in those conditions for a protracted period. The conditions claimant described amounted to what any reasonable and prudent person would have considered a grave situation, and claimant did not have any reasonable alternatives that would allow him to continue working while mitigating those hazards. He therefore quit work with good cause, and he is not disqualified from receiving unemployment benefits because of this work separation.

**DECISION:** Hearing Decision 17-UI-78622 is set aside, as outlined above.<sup>2</sup>

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

**DATE of Service:** April 5, 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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<sup>1</sup> For example, the winter of 2016-2017 was forecasted to become the fifth coldest in historical records, January 2017 was coldest January since 1985 and the seventh coldest January in recorded history, and the area experienced historically significant amounts of snow and other precipitation. We take notice of these generally cognizable facts (*see e.g.* [http://www.oregonlive.com/weather/index.ssf/2017/02/oregons\\_winter\\_of\\_2016-17\\_wont.html](http://www.oregonlive.com/weather/index.ssf/2017/02/oregons_winter_of_2016-17_wont.html)). 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.

<sup>2</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.

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