

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0517**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 103137). Claimant filed a timely request for hearing. On April 25, 2017, ALJ Sgroi conducted a hearing, and on April 28, 2017 issued Hearing Decision 17-UI-82068, affirming the Department's decision. On May 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Gage It Construction, LLC employed claimant as a flagger from August 2016 to July 28, 2016. Claimant worked part time, and only when work was available. Claimant last performed work for the employer on approximately June 20, 2016, after which the employer's business slowed and no additional work was available.

(2) Claimant's share of her monthly rent and utilities amounted to \$400. On August 1, 2016, claimant's landlord notified claimant that she was going to be evicted effective September 1, 2016. Claimant looked for another place to live but could not find another place to live for \$400 per month.

(3) Claimant could not afford to pay more in rent and utilities. She was struggling financially because her entire income amounted to \$176 per week in unemployment insurance benefits. The employer told claimant that he "didn't see any future work coming up." Audio recording at 27:55. She looked for other work but could not locate any.

(4) Claimant had depleted all of her financial resources and was facing homelessness. Claimant's adult children offered to allow claimant to live with them in Nevada; claimant agreed to avoid becoming homeless. Effective July 28, 2016, claimant quit work to avoid becoming homeless.

**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 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.

The ALJ concluded that claimant quit work without good cause because “insufficient evidence was presented to establish that the situation was so grave that claimant had no reasonable alternative but to quit” because “[c]laimant testified that she did not pursue the possibility of staying at a local homeless shelter while she continued to work and search for new housing.” Hearing Decision 17-UI-82068 at 2. The ALJ wrote that “[t]he evidence is not persuasive that a reasonable and prudent person, exercising ordinary common sense, would have believed that he or she had no reasonable alternative but to quit work.” *Id.* We disagree. We cannot fathom a circumstance under which a reasonable and prudent person, exercising ordinary common sense, would choose to become homeless and subject herself to living in a homeless shelter – assuming such shelter is even available – in order to retain a job with an employer that had not provided her with any work for over a month, particularly when she has the ability to avoid becoming homeless. Homelessness is a grave circumstance, and any reasonable and prudent person would quit work to avoid it. Claimant quit work with good cause, and she may *not* be disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 17-UI-82068 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service:** May 22, 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> 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.