

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0843**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that voluntarily left work for the employer without good cause (decision # 142517). Claimant filed a timely request for hearing. On June 28, 2017, ALJ Lohr conducted a hearing, and on June 29, 2017 issued Hearing Decision 17-UI-86861, affirming the Department's decision. On July 17, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the parties' written arguments when reaching this decision. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Boise Cascade Company employed claimant as a mill worker from September 13, 2016 to February 4, 2017.

(2) Before being offered work by the employer, claimant lived in Independence, Oregon and had been unemployed for approximately two months. The employer offered claimant work in Elgin, Oregon, which is over 300 miles from Independence.<sup>1</sup> Before accepting the offer, claimant arranged to live in his travel trailer on the property of a friend who lived approximately six miles from Elgin until claimant found other housing in or near Elgin. Claimant then accepted the employer's offer, moved into his travel trailer on his friend's property and began working for the employer.

<sup>1</sup> We take notice of this generally cognizable fact. 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.

(3) Claimant was unable to find other housing within 10 miles of Elgin, and did not want to live in La Grande, Oregon, which had a larger housing market, but was approximately 20 miles away. In addition, claimant was reluctant to commit to a long-term housing rental agreement because a labor union was negotiating its contract with the employer and threatening to strike, which would have left claimant unemployed. Claimant therefore continued living in his travel trailer on his friend's property and working for the employer, although poor air quality at the employer's mill irritated his sinuses.

(4) In December 2016, Elgin began experiencing its most severe winter conditions in 15 years, with approximately two months of often sub-zero temperatures at night and below freezing temperatures during the day, and with high temperatures below 35 degrees on all but approximately two days. The water pipes in claimant's travel trailer froze over, leaving claimant without running water, and therefore no functioning toilet, shower or sink. Claimant worked the swing shift, and could not use his friend's facilities when he returned from work at night and until morning because his friend slept during that time.

(5) Claimant determined that he could not spend the winter living in his travel trailer, but still was unable to find housing near Elgin. While searching for housing, claimant saw a number of advertisements for housing wanted in La Grande, but not for housing available there. Claimant also remained reluctant to commit to a long-term rental agreement because his labor union still was negotiating its contract with the employer and threatening to strike. In January 2017, claimant also received medical treatment, including antibiotics, for a severe sinus infection that he and his doctor attributed to poor air quality at the employer's mill.

(6) Claimant determined that he could no longer live in his travel trailer, and on January 21, 2017, notified the employer that he was quitting work, effective February 4, 2017, to move back to Independence, where he had family.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant voluntarily left work 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). "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 his employer for an additional period of time.

In Hearing Decision 17-UI-86861, that ALJ concluded that quit work without good cause because "experiencing a particularly harsh winter" was not so grave that claimant had no reasonable alternative but to quit, and that a reasonable and prudent person would have "explored other alternatives, such as using the milder spring and summer weather to research living quarters in the Elgin and La Grande area

or modify the travel trailer to withstand harsher weather conditions for a future winter.”<sup>2</sup> However, we disagree with the ALJ and conclude that continuing live in his travel trailer until spring was a reasonable alternative for claimant.

At the time claimant quit work, he already had lived in his travel trailer for approximately two months of often sub-zero temperatures at night and below freezing temperatures during the day, with no running water and therefore no toilet shower or sink, with no access to such facilities from when he returned from work at night until morning, and having experienced an illness severe enough to require medical treatment, including antibiotics. Without running water, claimant’s travel trailer essentially was uninhabitable, especially in such severe weather conditions, and his living situation was of such gravity that no reasonable and prudent person would have continued living in his travel trailer for several more weeks, if not months, for work that could end at any time due to a labor union strike, and which caused him to experience health issues requiring medical treatment.

The remaining issue is whether claimant had, at the time he quit, the reasonable alternative of moving to other housing within a reasonable commuting distance from work. Claimant’s reluctance to commit to a long-term rental agreement was reasonable and prudent, given that his labor union was threatening to strike, which would have left claimant unemployed. More importantly, however, it is undisputed that claimant was unable to find housing in or near Elgin, and although the employer’s witness speculated that claimant could have found housing in La Grande, claimant asserted that there was a shortage of housing in La Grande at the time, and that when he was searching for housing in Elgin, he saw a number of advertisements for housing wanted in La Grande, but not for housing available there. Audio Record at 27:40-28:00, 30:45-31:30. Claimant’s first-hand testimony regarding the shortage of housing in La Grande at the time he quit work shows that he likely could not have moved there at that time. Claimant therefore established that he had no reasonable alternative but to quit work when he did.

We therefore conclude that claimant voluntarily left work for the employer with good cause. Claimant is not disqualified from receiving benefits based on this work separation.

**DECISION:** Hearing Decision 17-UI-86861 is set aside, as outlined above.<sup>3</sup>

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

**DATE of Service:** August 17, 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>2</sup> Hearing Decision 17-UI-86861 at 2.

<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.

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