

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0902**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 80653). Claimant filed a timely request for hearing. On July 17, 2017, ALJ Lohr conducted a hearing, and on July 28, 2017, issued Hearing Decision 17-UI-89143, affirming the administrative decision. On July 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Healthcare Services Group employed claimant as a laundry worker in a nursing home/rehabilitation facility from June 3, 2011 until February 26, 2017. At all times relevant to this decision, claimant worked two jobs: she worked at Healthcare Services from 6:30 a.m. until 2 p.m. on weekends and 6:30 a.m. to 10:00 a.m. on weekdays, and worked at Walmart from 1p.m. to 10 p.m.

(2) Claimant's husband was an alcoholic and had abused claimant for several years. In November 2016, claimant's husband physically abused her to the extent that she had "marks" on her body. Audio recording at 10:47.

(3) To avoid her husband, claimant stayed at her home only when her husband was sober or away from their home. If her husband was home and intoxicated, she slept at friends' houses or slept in her car. Claimant wanted to divorce her husband, but could not afford to pay the costs of a divorce.

(4) Claimant has no family in Oregon, other than her husband. After her husband hurt her in November, claimant wanted to move to Oklahoma to live near her daughter, grandchildren, son, and mother, but could not afford to pay the costs of the move. Claimant's daughter expected to receive her tax refund in February 2017, and planned to use the money to pay for her mother's move to Oklahoma.

(5) On January 1, 2017, claimant notified her supervisor at Healthcare Services that she was quitting her job and that her last day would be February 26, 2017. Claimant worked through her notice period and voluntarily left work for Healthcare services on February 26. Claimant subsequently moved to Oklahoma.

**CONCLUSION 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 of time. OAR 471-030-0038(5) provides that good cause for leaving work includes, but is not limited to, leaving work for “compelling family reasons.” OAR 471-030-0038(1)(e)(A) defines “compelling family reasons” as “domestic violence, as defined in OAR 471-030-0150,<sup>1</sup> which causes the individual reasonably to believe that the individual’s continued employment would jeopardize the safety of the individual or a member of the individual’s family...”

The ALJ concluded that because claimant continued to work for the employer for three months after her husband injured her in November, she “failed to establish she reasonably believed continuing her employment with the employer would jeopardize her safety and well-being.” Hearing Decision 17-UI-89143 at 2. As a result, the ALJ concluded that claimant did not demonstrate good cause for leaving work under OAR 471-030-0038(5). We agree with the ALJ that claimant may not have demonstrated good cause for leaving work due to “compelling family reasons.” The ALJ erred, however, in failing to determine whether claimant met her burden to demonstrate good cause for quitting her job under the more general standard set forth in OAR 471-030-0038(4).

The record shows that claimant’s husband, who was an alcoholic, had been abusing her for several years; to avoid his abuse, claimant slept in her car or in the homes of friends, when her husband was home and intoxicated. Although claimant worked two jobs, with work hours sufficiently long that she had little time to sleep, she could not afford to divorce her husband or move out of the home she shared with him. Because claimant had no family in Oregon other than her abusive spouse, she wanted to move to Oklahoma, where she would have support and assistance from her family members. Based on this record, we conclude that the circumstances of claimant’s life in Oregon constituted a grave situation for her. A reasonable and prudent person who experienced the difficulties claimant did – an abusive spouse and lack of family support and assistance – would conclude she had no reasonable alternative but to quit her job so she could move to the state where her family lived.

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<sup>1</sup> OAR 471-030-150(2) (November 1, 2009) defines domestic violence in relevant part as “the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage...to the extent that the person’s health, safety or welfare is harmed or threatened thereby.”

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 17-UI-89143 is set aside, as outlined above.

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

**DATE of Service:** August 16, 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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