

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0943

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 154933). Claimant filed a timely request for hearing. On July 25, 2017, ALJ Amesbury conducted a hearing, and on July 26, 2017, issued Hearing Decision 17-UI-88957, affirming the administrative decision. On August 2, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Oregon Health Sciences University employed claimant as a veterinary research health technician from February 14, 2011 until May 25, 2017. Claimant's take home pay was approximately \$2,200 a month.

(2) Claimant moved from New Mexico to Portland, Oregon approximately six years ago. Claimant found that the damp and moldy Portland climate exacerbated his chronic asthma. He was bothered year-round by his asthma while living in Portland, except during the dry summer months. Claimant was granted intermittent leave under the Family and Medical Leave Act (FMLA), and took an average of two days of leave per month from his job because of his asthma.

(3) In approximately May 2016, claimant began living in a two bedroom apartment that he shared with a roommate. One week before the lease on this apartment was due to expire, in May 2017, claimant learned that his roommate was moving out. Claimant was unable to afford the rent of his apartment without his roommate.

(4) Claimant spent approximately one week looking for a one bedroom apartment in the Portland metropolitan area, but found none that he could afford.¹ The few available one bedroom apartments rented for \$1,250 to \$1,300 per month.

¹ We take official notice that Portland, Oregon is one of the tightest rental markets in the country according to the U.S. Census Bureau. See <https://www.portlandoregon.gov/phb/article/468119>, "National Housing Study Confirms Portland's

(5) Claimant quit his job and moved to New Mexico, where his parents lived, because he was unable to find an affordable apartment and “didn’t want to be homeless” (Audio recording at 8:46), because his asthma was less bothersome in the dry desert climate of New Mexico, and because he wanted to live near his parents.

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 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. Claimant had asthma, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

In Hearing Decision 17-UI-88957, the ALJ concluded that claimant’s reasons for quitting his job to move to New Mexico – inability to find affordable housing, a climate that did not exacerbate his asthma, and a desire to live near his parents – “did not describe a situation of such gravity that a reasonable and prudent person with claimant’s characteristics and qualities would have left work.” Hearing Decision 17-UI-88947 at 5. We disagree with the ALJ’s conclusion and his characterization of the facts upon which this conclusion was based.

Claimant’s asthma was not “intermittent” and did not appear to be “controlled”², as the ALJ asserted. Except for the dry summer months, claimant was bothered year-round by his asthma when he lived in Portland, and missed an average of two days a month because of his condition. Claimant’s chances of finding an affordable apartment were slim, given Portland’s tight housing market and the cost of rent; at the time claimant was looking, the average rent for a one-bedroom apartment in the Portland area was \$1,116, an amount more than one-half of claimant’s take home pay.³ Claimant’s inability to find an

Tight Rental Market.” Any party that objects to this noticed fact must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, the noticed fact will remain part of the record.

² Hearing Decision 17-UI-88947 at 3.

³ The apartment industry association Multifamily NW conducted a survey of its members in the spring of 2017; based on the survey results, it determined that the average rent for a one-bedroom apartment in the Portland metropolitan area was \$1,116. “Some Portland-area rents are falling, landlords group says,” *Oregonian*, April 18, 2017. The U.S. Department of Housing and Urban Development defines “affordable housing” as “housing for which the occupant(s) is/are paying no more than 30 percent of his or her income for *gross housing costs, including utilities.*” See the US Department of Housing and Urban Development website at: https://www.huduser.gov/portal/glossary/glossary_a.html#ahp (emphasis added).

affordable apartment in Portland's tight housing market created a grave situation for him – if he did not find an apartment during the week before his lease expired, he was going to be homeless. Audio recording at 8:46. A reasonable and prudent person, whose asthma was exacerbated by the Portland climate and who faced the possibility of homelessness due to a lack of affordable housing, would conclude he had no reasonable alternative but to quit his job and move to an area where the climate was more favorable to his health and where he could obtain assistance and support from his family.

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

DECISION: Hearing Decision 17-UI-88957 is set aside, as outlined above.

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

DATE of Service: August 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. 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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