

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1118**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121959). Claimant filed a timely request for hearing. On July 27, 2017, ALJ Amesbury conducted a hearing, and on August 30, 2017 issued Hearing Decision 17-UI-91553, affirming the Department's decision. On September 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Transmission Exchange Co. employed claimant from August 18, 2012 until June 21, 2017 as a parts sales representative.

(2) Before June 18, 2017, claimant's 15-year-old nephew had been neglected and abandoned by his parents. In 2016, he began to live with his grandmother, claimant's mother, in Tacoma, Washington. The nephew's father moved to New York. The nephew's mother lived in Tacoma, and visited him approximately once per month. Claimant's father provided support to claimant's family living in Tacoma, although he lived in California.

(3) On June 18, 2017, claimant's father died. Over the next few days, claimant traveled to Tacoma, and subsequently traveled with his nephew to California where claimant's father had lived. While traveling, claimant's nephew explained how claimant's mother could not or did not adequately care for him, including leaving him for extended periods of time while she vacationed, and failing to provide adequate nutrition. She sometimes left the nephew with no food or basic necessities such as toilet paper.

(4) Claimant returned to Tacoma with his nephew. Claimant's nephew, mother and other family members asked claimant to move to Tacoma to support his family members now that his father had passed away and to take care of his nephew.

(5) Claimant spoke with the employer about his family circumstances. The employer offered claimant a leave of absence to address his family's affairs in Tacoma. It was not possible for claimant to work for the employer while living in Tacoma.

(6) On June 21, 2017, claimant quit work to relocate to Tacoma to support his family and care for his nephew.

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

In Hearing Decision 17-UI-91553, the ALJ concluded that claimant did not quit work with good cause under OAR 471-030-0038(5)(g) because his nephew was not a member of his immediate family, as defined under OAR 471-030-0038(1)(f), and he therefore did not quit work due to compelling family reasons, as defined under OAR 471-030-0038(1)(e). The ALJ also concluded that claimant did not quit work with good cause under OAR 471-030-0038(4) because claimant's personal situation, where his 15-year-old nephew who makes "inappropriate" meal choices, is left alone by his caretaker, and who has an "inattentive" mother, was not a grave.<sup>1</sup> The ALJ also summarily concluded that claimant failed to establish that he had no reasonable alternative to leaving work.<sup>2</sup>

We agree with the ALJ that claimant did not quit work with good cause due to compelling family reasons under OAR 471-030-0038(5)(g). However, we disagree with the ALJ's conclusion that claimant quit work without good cause under OAR 471-030-0038(4) by leaving work to care for his minor nephew. We disagree with the ALJ's characterization of the minor nephew's situation as "mak[ing] meal choices that claimant considers inappropriate" and having an "inattentive" mother, where claimant provided undisputed testimony that his nephew's parents had abandoned him and claimant's mother left the nephew alone for extended periods of time without food or basic necessities. Claimant described his nephew's circumstances when claimant arrived in Tacoma as "basically living in a house by himself." Audio Record at 19:54. There is no evidence to show that anyone other than claimant was willing or able to care for the nephew. The employer offered claimant a leave of absence. However, being as the nephew would be a minor for three more years with no other adult to potentially care for him, a temporary leave of absence, where claimant did not intend to return to Oregon, was not

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<sup>1</sup> Hearing Decision 17-UI-91553 at 3.

<sup>2</sup> *Id.*

reasonable or responsive to claimant's situation. Nor is there evidence of another reasonable alternative available to claimant. Under those circumstances, we find that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work to care for his nephew. No such person would have continued to work for his employer for an additional period of time.

Claimant quit work with good cause. He is not disqualified from receiving benefits based on his work separation from the employer.

**DECISION:** Hearing Decision 17-UI-91553 is set aside, as outlined above.<sup>3</sup>

J. S. Cromwell and D. P. Hettle.

**DATE of Service: October 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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<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.