

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1308

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132433). Claimant filed a timely request for hearing. On October 25, 2017, ALJ Comstock conducted a hearing, and on October 30, 2017 issued Hearing Decision 17-UI-95679, affirming the Department's decision. On November 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Prior to 2015, claimant moved from Maine to Oregon, after which he began working full time as a finance broker with a gross income of \$3,500 per month, and take-home pay of approximately \$2,900 per month.¹

(2) Claimant became roommates with a coworker, with whom he rented an apartment in Tualatin, Oregon for \$1,600 per month. Claimant had difficulty meeting his financial obligations on his finance broker pay and sought a part time job elsewhere to supplement his income.

(3) Bellagio's Pizza Intl, Inc. employed claimant as a part time pizza delivery driver from September 2016 to September 9, 2017. The employer paid claimant \$11.25 per hour, and he earned approximately \$35 per shift in tips. Between September 2016 and summer 2017, claimant generally worked between one and three five-hour shifts each week. Beginning in the summer of 2016, claimant worked only one shift per week.

(4) In early August 2017, claimant's full time employer notified claimant and his coworker/roommate that they would be allowed to work remotely. Claimant and his roommate both decided to move away

¹ We take notice of the generally cognizable fact that the net income of someone earning \$3,500 per month gross wages is approximately \$2,900 per month. 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.

from the Tualatin area; claimant considered moving to Florida with his roommate or moving back to Maine to be closer with his family. In early August 2017, claimant and his roommate notified the landlord of their intent to vacate the apartment effective September 15, 2017. The landlord accepted notice, rented claimant's apartment to a new tenant, and notified claimant and his roommate that he had found a new tenant for their apartment. Also in August 2017, claimant notified the employer that he was going to move and leave work in September.

(5) On September 1, 2017, claimant's full time employer notified claimant and his roommate that they had been laid off from work, effective immediately. The full time employer gave claimant a severance package totaling \$3,500. Claimant told the employer that he had been laid off work from his regular full time job and asked the employer for additional hours at work. The employer gave more hours.

(6) Between September 1, 2017 and September 9, 2017, claimant conducted online searches for a roommate. He did not find one, could not afford to rent a new apartment alone, and felt that if he did not move as he had planned he would have to become homeless and live in his car. Claimant decided to move back to Maine and reside with his parents. Effective September 9, 2017, claimant quit work for the employer. Five days later, he moved back to Maine.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant quit 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.

The ALJ concluded that claimant voluntarily quit work without good cause, reasoning in part that at the time claimant gave the employer notice of his intent to quit work "there was no situation of any gravity." Hearing Decision 17-UI-95679 at 2. However, the Court of Appeals has repeatedly held that in a case of an individual voluntarily leaving work, the analysis should focus on the gravity that existed at the time the individual left work, not when he gave notice.² We therefore disagree with the ALJ that claimant's motivations for giving notice are material to the good cause analysis in a quit case.

² See accord *Constantine v. Employment Dep't.*, 200 Or. App. 677, 117 P.3d 279 (2005) (immaterial that claimant who quit work under the DV law got a restraining order after giving notice of her intent to quit work instead of beforehand; claimant obtained the order and made decisions about the reasonableness of that as an alternative before the actual quit occurred, thus proving she considered her available alternatives prior to quitting, as the DV law requires); *J. A. W. v. Employment Dep't.*, 237 Or. App. 520, 240 P.3d 86 (2010) (although making a temporary stalking protective order permanent might at one point have best guaranteed claimant's safety, between the time she gave notice and the time she left, the hearing had been postponed a month and she feared she was not safe in the interim – the time to measure such a matter is at the time she quit, not at the time she gave notice); *Early v. Employment Dep't.*, 247 Or. App. 321, 360 P.3d 725 (2015) (it is not significant that claimant gave 30-days' notice to quit her job; events occurred after she gave notice that reinforced her decision to quit, and

The ALJ also concluded that claimant did not have good cause to voluntarily leave work because, at the time he quit work, he had reasonable alternatives. The ALJ wrote, “It is unclear from this record whether claimant had to leave his apartment, or whether he could have found another roommate in the event the landlord would have allowed him to stay. Claimant did not explore that option. Neither did claimant explore other options to keep the one job that was still available to him. His employer was willing to give him more work, and although claimant might have been earning less with this employer, he was earning an average of \$18.25 per hour . . . [and] been given a severance package of \$3,500.” The ALJ concluded that claimant “made only minimal efforts to explore opportunities to stay” and therefore “failed to show a situation of gravity” when he quit his job. *Id.* at 3. We disagree.

First, it is clear from this record that claimant had to leave his apartment. He gave six weeks’ notice of his intent to leave the apartment, during which the landlord rented the apartment to a new tenant and told claimant he had done so. There was no reason for claimant to ask the landlord to allow him to stay longer; he already knew he could not. And even if he had asked and been allowed to stay in the apartment, he had lost his roommate. Given that he could not afford to support himself paying half the rent on that apartment when working one full time job that paid over \$20 per hour, the record fails to suggest that he could have afforded to support himself paying for the apartment on his own while working a part time job that paid less, which he logically would have had to do for some period of time while searching for a new roommate. The same would be true even if the employer increased his hours to full time, since he would still have been earning less than he had from his previous full time job. We also note that claimant did, in fact, search for another place to live prior to leaving his job and moving to Maine, but was not successful. Regarding claimant’s \$3,500 severance package, the ALJ did not ask and the record does not show whether the severance package was comprised of a cash payment, benefits or a combination thereof, nor did the ALJ inquire as to claimant’s financial situation at the time he received the severance package and how much of the severance or other cash he had available to support himself in Oregon. As such, the record fails to show that claimant had the means to support himself in Oregon, or that remaining in Oregon was a reasonable alternative to quitting his job and returning to Maine.

In sum, at the time claimant quit work he had lost his regular full time job, given up his apartment, lost his roommate, and he lacked the funds to find a new roommate and apartment. Claimant had to choose between quitting his job and moving in with his parents in Maine and staying employed in Oregon while homeless, and no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would choose to become homeless, or choose the option that would result in a substantial likelihood of homelessness. Claimant therefore showed that he quit work with good cause, and he may not be disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-95679 is set aside, as outlined above.³

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

the “appropriate time to evaluate whether claimant had good cause was not when claimant provided her notice, but when she actually quit the job”).

³ 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.

DATE of Service: December 5, 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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