

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0810**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124222). Claimant filed a timely request for hearing. On August 8, 2018, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on August 13, 2018 issued Order No. 18-UI-114836, affirming the Department's decision. On August 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The Oregon Department of Transportation employed claimant from January 17, 2017 until July 14, 2017 as an assistant project manager. Claimant worked as an engineer for the employer and had a principles and practice of engineering (PE) license in California. At hire, claimant agreed that he would transfer his PE license to Oregon by July 17, 2018.

(2) Claimant moved from California to North Bend, Oregon to work for the employer. Claimant's wife and children remained in California, but claimant and his wife planned that she would move to Oregon with the children to join claimant in June 2017, after the children's school year ended. They had also considered Portland, Oregon as a possible location for one child to attend college.

(3) During the first few months of 2017, claimant's wife visited claimant in North Bend, Oregon. She disliked North Bend because it was a small town and because it lacked religious diversity. Claimant continued to work in North Bend, but began to seek opportunities to transfer to Portland because it was a larger city.

(4) In May 2017, claimant's wife told claimant that she would not move to Oregon because she feared for her safety because she is Muslim, wears a hijab, and uses public transportation. She considered Portland unsafe after seeing news reports from May 26, 2017 regarding a man who stabbed three people, killing one, in Portland when they intervened to stop the man from subjecting two female Muslim teenagers who were wearing hijabs to hate speech based on their race and religion. Claimant's wife told him she would divorce him rather than move to Oregon.

(5) Sometime before July 2017, claimant asked the employer to allow him to work in Oregon until December 2017 or September 2017 without transferring his PE to Oregon because his wife would not move to Oregon. Claimant hoped she might change her mind during that time. The employer refused.

(6) On July 7, 2017, claimant sent the employer a letter stating that his last day of work would be July 14, 2017. Claimant quit work because his wife refused to move to Oregon for personal security reasons and to return to California and end the separation from his family.

**CONCLUSIONS 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) (January 11, 2018). 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 Order No. 18-UI-114836, the ALJ found claimant quit work because he did not want to transfer his PE license to Oregon, and that he did not have good cause to quit because transferring his license from California to Oregon did not constitute a grave situation.<sup>1</sup> However, the record also shows that claimant had been separated from his wife and children since January 2017 and his wife refused to move to Oregon due to concerns for her personal safety. So, although at some time in 2017 claimant was willing to continue working if the employer extended his ability to work without the PE license in Oregon so he would have time to convince his wife to move to Oregon,<sup>2</sup> at the time claimant quit, he was no longer willing to continue working in Oregon while his family remained in California and his wife had told him she would opt for divorce rather than move to Oregon. The record does not show, at the time claimant quit, that claimant’s familial circumstances would change so that he would no longer be separated from his wife and children. Moreover, given the circumstances, registering his PE in Oregon was not a reasonable alternative to quitting where claimant did not know if his wife would ever agree to move to Oregon. Claimant has shown, by a preponderance of the evidence, that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, who was separated from his family due to work and whose marriage was at risk if he chose to remain in Oregon, would continue working for the employer for an additional period of time.

Claimant quit work with good cause. He is not disqualified from receiving unemployment insurance benefits because of his work separation.

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<sup>1</sup> Order No. 18-UI-114836 at 3.

<sup>2</sup> The record does not contain information to show if claimant asked the employer to extend his permission to work in Oregon without the PE license before or after the May 2017 incident that caused his wife to decide she would not move to Oregon.

**DECISION:** Order No. 18-UI-114836 is set aside, as outlined above.

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

**DATE of Service:** September 24, 2018

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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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