

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0190

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 22, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work with good cause (decision # 125202). The employer filed a timely request for hearing. On December 13, 2013, ALJ Lohr conducted a hearing, and on January 16, 2014 issued Hearing Decision 14-UI-08651, reversing the Department's decision. On January 30, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. In her argument, claimant submitted, and asked EAB to consider, information that was not part of the hearing record. However, claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Motosports employed claimant as a customer service representative from June 4 to September 26, 2013.

(2) Claimant lived and worked for the employer in Oregon. Claimant's fiancé, who had cancer, was in Seattle, Washington.

(3) Claimant worked for the employer on weekdays. In late August 2013, she requested unpaid leave on Thursday, September 12 and Friday, September 13, 2013 to participate in a "cancer race." Transcript at 24. The employer granted claimant's request. Claimant and her fiancé subsequently decided to go to Hawaii, and claimant requested an additional day of unpaid leave on Monday, September 16, 2013. The employer again granted claimant's request.

(4) By September 22, 2013, claimant's fiancé was on his "deathbed." Transcript at 26. From September 23 through 26, 2013, claimant repeatedly asked the employer for an unpaid leave of absence for an indefinite period of time to be with her fiancé. The employer denied claimant's requests. Claimant therefore quit work on September 26, 2013.

(5) On Friday, September 27, 2013, left Oregon, visited her fiancé in Seattle, and returned to Oregon on Sunday, September 29. On Saturday, October 4, 2013, she again left Oregon, visited her fiancé in Seattle, and returned to Oregon on October 5. Claimant's fiancé died on October 6, 2013.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit work without good cause.

A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). If an individual quits work to accept an offer of other work, good cause exists only if the offer is definite, and the offered work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, is reasonably expected to continue, and pays an amount equal to or in excess of the weekly benefit amount, or greater than the work left. OAR 471-030-0038(5)(a) (August 3, 2011). Otherwise, "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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Under OAR 471-030-0038(4), 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.

At hearing, claimant testified that she quit work, at least in part, to accept an offer of other work. Transcript at 5-6. In Hearing Decision 14-UI-08651, however, the ALJ expressly determined that claimant's testimony on that issue was not credible.¹ We have reviewed the record in its entirety, and agree with that determination. We therefore focus on the employer's denial of claimant's request for an indefinite leave of absence as the reason claimant quit work.

At hearing, claimant testified that she visited her fiancé on weekends, and failed to show that she required time off from work to do so. Transcript at 11-12. The employer had granted claimant three days' unpaid leave earlier that month, and the employer's human resources testified that a request for one or two days more days off would have been reasonable. Transcript at 21. Absent evidence that claimant required a leave absence, and that the employer was unwilling grant her one, claimant failed to establish that she had no reasonable alternative but to quit work. We therefore conclude that claimant quit work without good cause, and that she is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-08651 is affirmed.

¹ Hearing Decision 14-UI-08651 at 2.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: February 27, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.