

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0219

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 8, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 162404). Claimant filed a timely request for hearing. On January 15, 2014, ALJ Seideman conducted a hearing, and on January 16, 2014 issued Hearing Decision 14-UI-08631, affirming the Department's decision. On February 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant's argument also contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Kenneth Potter (Kenneth), through his legal guardian, employed claimant as a live-in caregiver from July 20, 2006 until August 23, 2013. Fiscal Intermediary Services administered the funds that were paid to claimant for the services she provided to Kenneth. Fiscal Intermediary Services assigned a "personal agent" to oversee the payments it made on behalf of Kenneth.

(2) Kenneth and his sister Cheryl Potter (Cheryl) lived together in the same house. Both were in their thirties and had cerebral palsy and intellectual disabilities. Both required significant care on an ongoing basis. Claimant lived with Kenneth and Cheryl and attended to their needs. Claimant was also responsible for cleaning the house, cooking and doing the laundry. Claimant received pay for approximately 138 hours of work per month to care for Kenneth. Claimant received her lodging and food as reimbursement for the care she provided to Cheryl.

(3) Through the years of her employment, claimant's scheduled time off was often changed with little notice to her. The workers assigned to provide respite care during claimant's away time from work required these changes. Making such changes disturbed claimant's plans and caused her to become "really upset." Audio at ~10:06. In 2012, when Kenneth and Cheryl's mother was providing the respite care, claimant complained to Kenneth's personal agent about the frequency with which the mother was changing her scheduled time off. The personal agent told her, "The guardian [the mother] was always right." Audio at ~12:44. The personal agent for Kenneth was replaced in early 2013. In 2013, although Kenneth's mother no longer provided the respite care, the new respite worker also made changes to claimant's scheduled time off. Claimant did not complain to the new personal agent about the changes to her schedule.

(4) In approximately 2011, claimant was hospitalized with double pneumonia. After the hospitalization, claimant developed COPD. Claimant had numerous responsibilities in providing care to Kenneth and Cheryl. By 2013, claimant thought that she was "worn out" and that providing care for Kenneth and Cheryl was "getting to be too much." Audio at ~11:37.

(5) On approximately July 26, 2013, claimant notified Kenneth and Cheryl's mother that she was going to leave work in one month. Claimant decided to quit because she was "tired there" and "getting burned out." Audio at ~17:23.

(6) On August 23, 2013, claimant left work and did not return.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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.

Although claimant discussed her caregiving work extensively at the hearing, it was difficult to come to grips with what actually caused her to leave work. While she specifically complained that she was "tired" and "burned out" from working as a caregiver, claimant failed to present any evidence that the impact of the feelings she described was objectively grave or even that these feelings substantially interfered with her ability to continue to work. Nor did claimant present evidence to show she had tried to abate her feelings of fatigue and was unable to do so. Claimant also specifically complained about changes that were unilaterally made to her scheduled times off. However, claimant did not take the reasonable step of raising her concerns about these changes with the new personal agent before she decided to quit work. In addition, claimant also did not present any evidence that she had discussed her concerns about the scheduling changes with Kenneth and Cheryl's mother, who was apparently also their legal guardian and claimant's employer. By not giving the mother an opportunity to rectify the

situation, claimant did not present evidence that she had taken the actions of a reasonable and prudent caregiver to maintain her job.

A reasonable and prudent caregiver would not have concluded she needed to quit work simply because she felt tired unless she had evidence that her fatigue very significantly impaired her ability to continue to provide that care and she had reasonably tried to address her feelings of fatigue and had been unsuccessful. A reasonable and prudent caregiver would also not have concluded she needed to quit work because of changes to her scheduled time off unless, at a minimum, she had raised her concerns with the new personal agent and with the clients' mother to allow them to try to resolve the situation. For these reasons, claimant did not show either that her situation was objectively grave or that she had no reasonable alternative other than to leave work when she did.

Claimant did not show she had good cause to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-08631 is affirmed.

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

DATE of Service: March 6, 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.