

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0221

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 #93501). Claimant filed a timely request for hearing. On January 8, 2014, ALJ Menegat conducted a hearing, and on January 13, 2014 issued Hearing Decision 14-UI-08371, affirming the Department's decision. On January 30, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Flannerys Drop Box Services Inc. employed claimant from July 19, 2007 to August 17, 2013 as a driver in the Portland, Oregon area.

(2) Claimant lived in or near Portland, Oregon during his employment, but also owned a home in Michigan. In February 2013, claimant's wife began to spend extended periods at the family's home in Michigan to care for her ailing father, who also lived in Michigan.

(3) Claimant and his wife decided to move permanently to their house in Michigan so they could live together and claimant's wife could continue to care for her father. In August 2013, claimant's wife returned to Oregon to live with claimant and to help prepare for the family's move to Michigan.

(4) Claimant left work on August 17, 2013 to prepare to move to Michigan.

(5) Claimant did not have an offer of work in Michigan before he quit.

(6) On approximately October 1, 2013, claimant and his wife moved to Michigan. Claimant spent August and September 2013 packing, transferring bank accounts, and preparing to leave his rental home in Oregon.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without 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 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 P2d 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.

Claimant quit work to prepare to move, and to move to Michigan with his wife so she could act as a caregiver for her ailing father. Claimant did not move to Michigan until approximately October 1, 2013. Claimant did not assert or show he faced a situation of such gravity that he could not have continued working while he prepared to move. Claimant had the reasonable alternative of continuing to work until a date closer to when he moved to Michigan. Alternately, claimant could have requested time off from work, or to work part time while he prepared to move. Rather than quit, a reasonable and prudent person would have continued to work for his employer until a date closer to the date he moved to Michigan. Claimant failed to show he faced a situation of such gravity that he had no reasonable alternative but to quit work more than a month before he moved to Michigan.

Claimant quit work without good cause and is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-08371 is affirmed.

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

DATE of Service: February 28, 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.