

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0324

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 11, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #142342). Claimant filed a timely request for hearing. On February 4, 2014, ALJ Monroe conducted a hearing, and on February 20, 2014 issued Hearing Decision 14-UI-10757, affirming the Department's decision. On February 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument 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. 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) Columbia Helicopters, Inc. employed claimant from January 2, 2013 to May 22, 2013 as a manufacturing coordinator.

(2) Claimant lived and worked for the employer in the greater Portland, Oregon metropolitan area.

(3) Claimant's mother lived alone in a condominium in Ohio. She was self-sufficient and did not require daily care, but sometimes experienced dizziness and tiredness, and needed to take notes to organize her daily activities. There were no immediate family members living near claimant's mother who were available to assist claimant's mother on a daily basis.

(4) Claimant decided to move to Ohio to live with his mother and to assist her with preparing her will and other financial matters, and with preparing to sell her condominium and potentially moving to an assisted living facility. Claimant was not able to complete these tasks while in Oregon.

(5) Claimant did not ask the employer if he could take a leave of absence. He did not know if or when he would return to Oregon.

(6) The employer had no work available in Ohio, and it was not possible for claimant to commute between Oregon and Ohio for work. Claimant did not look for work in Ohio.

(7) On May 22, 2013, claimant quit work to move to Ohio to assist his mother.

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

A claimant who quits work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause to quit work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Quitting work with good cause includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g) (August 3, 2011). OAR 471-030-0038(1)(e)(B) provides, in relevant part, that “compelling family reasons” exist when, among other things, the illness or disability of an immediate family member necessitates a claimant’s care. OAR 471-030-0038(1)(e)(B). 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). 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 on May 22, 2013 to move to Ohio to assist his mother with her financial and legal matters. Although claimant’s mother experienced symptoms such as dizziness, tiredness and memory problems, claimant did not assert or show that his mother had an illness or disability that “necessitated” his care. Nor did claimant ask the employer for time off work before quitting. Without having requested time off work before quitting, claimant failed to show that the employer did not accommodate a request for time off as required to establish good cause to quit due to a “compelling family reason” under OAR 471-030-0038(1)(e)(B). Claimant therefore did not quit work due to “compelling family reasons” under OAR 471-030-0038(1)(e), and therefore did not quit work for good cause under OAR 471-030-0038(5)(g).

Claimant also failed to establish that he quit work with good cause under OAR 471-030-0038(4). Claimant testified that taking time off work was not a reasonable alternative to quitting because it would have been an “inappropriate” and “unfair” to the employer to request time off work without knowing if or when he would return to Oregon. Audio Record ~ 30:49 to 31:36, 12:18 to 12:57. However, claimant failed to show that assisting his mother with her financial and legal matters required him to remain in Ohio permanently or for so long that no employer would have granted a leave of absence for that purpose. Absent a showing that claimant’s employer was unwilling or unable to do so, claimant failed to establish that had no reasonable alternative but to quit work.

Claimant quit work without good cause. Claimant therefore is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 14-UI-10757 is affirmed.

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

DATE of Service: March 19, 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.