

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0375

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 14, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75432). On December 9, 2013, the Office of Administrative Hearings (OAH) received claimant's request for hearing by mail. On December 30, 2013, ALJ Kangas issued Hearing Decision 13-UI-07288, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within fourteen days. On January 13, 2014, OAH received claimant's response. On February 21, 2014, ALJ Triana conducted a hearing, and on February 24, 2014 issued Hearing Decision 14-UI-10999, allowing claimant's request for hearing, and affirming decision # 75432. On March 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No party appealed the portion of Hearing Decision 14-UI-10999 allowing claimant's request for hearing. We therefore limit our review to whether claimant had good cause to quit working for the employer.

FINDINGS OF FACT: (1) Blackstone Audio/Audiogo LTD/BBC from November 1, 2011 to August 23, 2013 as a merchandising coordinator.

(2) Claimant lived in Ashland, Oregon with her boyfriend while she worked for the employer. In July 2013, claimant's relationship with her boyfriend ended. Claimant's boyfriend had leased the home until August 2014, and claimant continued to live with him, but did not want to do so indefinitely. Claimant paid \$450 per month for rent.

(3) Claimant earned \$14.50 per hour, and worked forty hours per week for the employer, for gross earnings of \$2,513 per month (\$580 per week x 52 weeks = \$30,160, divided by 12). She had a car payment and had to pay for car insurance and gasoline. She did not have furniture or other household items.

(4) Claimant looked at sublease opportunities online, but did not find housing from those resources.

(5) Claimant's parents offered for claimant to live with them in New York without paying rent.

(6) Claimant asked the employer if she could work remotely from New York. The employer would not allow her to work remotely from New York for business reasons. The employer had continuing work available for claimant in its Ashland, Oregon location.

(7) Before July 2013, claimant had purchased a plane ticket to travel to New York on August 27, 2013 for a vacation. On August 23, 2013, claimant left work and decided to use the plane ticket to move to New York to live with her parents. She moved to New York on August 27, 2013.

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

The first issue is the nature of claimant's work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a) (August 3, 2011).

The employer had continuing work available for claimant after August 27, 2013. Claimant's employment ended because she was unwilling to continue working for the employer in Ashland, Oregon. The employer did not prevent her from doing so. Because claimant could have continued working for the employer for an additional period of time, the work separation is a quit.

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 P2d 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.

Claimant quit her job to move to New York to live rent-free with her parents. Claimant did not show that the money she saved by moving to New York exceeded the remuneration she would have received had she continued working for the employer. Claimant had monthly earnings of \$2,500 from work, and did not show that rent was so high in Ashland, Oregon that she would have no net earnings or would be homeless if she did not move to New York. Absent such a showing, claimant failed to establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. Claimant had the reasonable alternative of continuing to work for her employer and looking for affordable housing within commuting distance of her work in Ashland, Oregon. We therefore conclude that 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-10999 is affirmed.

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

DATE of Service: March 26, 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.