

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0466

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On February 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 163919). Claimant filed a timely request for hearing. On March 17, 2014, ALJ Wipperman conducted a hearing, and on March 19, 2014, issued Hearing Decision 14-UI-12867, affirming the Department's decision. On March 24, 2014, claimant filed an application for review with the Employment Appeals Board (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 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) Oregon Health Authority employed claimant as a mental health nurse from August 17, 2011 to January 10, 2014. Claimant's workplace was the Oregon State Hospital in Salem, OR where she worked a 10-hour night shift, full time. When claimant began her employment, she resided in Stayton, OR, approximately 17 miles from Salem.¹

(2) In early 2013, claimant sold her Stayton residence to minimize a loss of value in the property. She sought a rental in the area but could not find one because she owned a horse. On August 31, 2013, claimant moved from Stayton to Creswell, OR, approximately 75 miles from Salem², where she had

¹ We take notice of this generally cognizable fact. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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purchased a less expensive replacement residence with acreage to accommodate her horse. Claimant's commute to and from Salem took approximately 90 minutes each way and left her with approximately "two to three hours of real sleep" between work shifts which resulted in fatigue, headaches, gastrointestinal distress and anxiety at work. Audio Record ~ 17:00 to 17:30.

(3) In October 2013, claimant visited her physician due to her health concerns. Her physician prescribed claimant various medications for her symptoms and recommended lifestyle changes but did not recommend that she quit her job. Claimant's symptoms did not improve.

(4) In December 2013, without consulting her physician, claimant concluded she needed to quit work to improve her health. On or about December 26, she notified the employer that she was "struggling with the commute" and had decided to quit, but would work "as long as needed" by the employer to replace her. Audio Record ~ 27:30 to 29:00. Claimant and the employer eventually agreed that claimant's last day would be January 10, 2014, when she quit.

CONCLUSIONS AND REASONS: We agree with the ALJ. 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Where the gravity of the situation experienced by a claimant results from her own deliberate actions, to determine whether good cause exists, the actions of the claimant in creating the grave situation must be examined in accordance with the good cause standards of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

Claimant left work because of her own deliberate actions in moving to Creswell, where she could better afford a residence with acreage for her horse, and from her new residence, she "struggle[ed] with the commute" which precipitated the health problems that caused her to quit. Claimant candidly admitted at hearing that she did not experience the "concerns" that caused her to resign until she moved 75 miles away from Salem and failed to show that a grave circumstance motivated that move in August 2013. Audio Record ~ 22:30 to 23:30. For example, claimant did not assert or show that she could not have waited to sell her Stayton residence, or after selling it, she could not have sold her horse or boarded it in the Salem area while she resided in a rental unit or until she found a suitable residence for purchase within a reasonable commuting distance to work. Under OAR 471-030-0038(5)(f), claimant failed to show that no reasonable and prudent person in her circumstances, interested in maintaining her employment, would have pursued those alternatives and continued to work for the employer for an additional period of time.

Moreover, we agree with the ALJ that claimant failed to show that her health condition was so grave that she had no reasonable alternative but to quit when she did. Claimant did not consult her physician about quitting, her physician did not recommend that she quit, claimant did not notify the employer that her health was the reason she was quitting and claimant offered to continue to work indefinitely until the employer found a replacement for her.

Claimant did not show good cause for leaving work when she did, and under ORS 657.176(2)(c), is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-12867 is affirmed.

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

DATE of Service: April 11, 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.