

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0490

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73422). Claimant filed a timely request for hearing. On March 17, 2014, ALJ Triana conducted a hearing at which the employer did not appear, and on March 21, 2014 issued Hearing Decision 14-UI-13230, affirming the Department's decision. On March 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that presented new reasons for his decision to leave work. Claimant had ample opportunity at hearing to provide these new reasons in response to the ALJ's open-ended questions about why he left work and he did not do so. Audio at ~8:00, ~14:40, ~17:28; ~22:40. Because claimant's argument contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond his reasonable control prevented him from offering the new information during the hearing, EAB did not consider it. *See* ORS 657.275(2), OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) The Home Depot employed claimant as a sales associate from February 29, 2012 until November 30, 2013. Claimant worked full time for the employer in a permanent position.

(2) Claimant's 76 year-old father owned a Christmas tree farm. Each December, claimant's father customarily operated a Christmas tree lot in Redmond, Oregon. For the past fifteen years, claimant had helped his father harvest the Christmas trees and sell them on the lot. Claimant's father usually hired some non-family members to help him harvest the trees.

(3) Until the middle of November 2013, claimant was uncertain about whether he going to help his father harvest and sell Christmas trees in December 2013. In the middle of November 2013, claimant

brought up working on the Christmas tree lot with his father. Claimant's father told claimant that he could use claimant's help during the month of December 2013. Claimant understood that the work for his father was temporary and would not last beyond December. Although claimant and his father did not discuss how much he would earn for his work in December, claimant expected to make approximately what he had earned in previous years, which was \$2,000.

(4) On November 20, 2013, claimant asked the employer's store manager if he could take a leave of absence from work for the month of December to assist in the family Christmas tree business and work on the Christmas tree lot. The manager told claimant that a leave was not possible because the employer's work schedule for December had already been posted. The store manager told claimant that she would agree to cut his weekly work hours to twenty five to enable him to work at the Christmas tree lot while continuing to work for the employer. Claimant thought that working for the employer and at the Christmas tree lot in December would be "too much work" and decided to leave work. Audio at ~16:26.

(5) On November 30, 2013, claimant notified the employer that he was quitting work effective immediately.

(6) On November 30, 2013, claimant started working at the Christmas tree lot. Claimant's father paid claimant \$2,500 for his work at the Christmas tree lot. Claimant's work for his father ended on December 26, 2013.

CONCLUSIONS AND REASONS: 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 he 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. When a claimant leaves work to start new work, good cause exists only if, among other things, the new work is reasonably expected to continue. OAR 471-030-0038(5)(a).

At hearing, the only reason claimant stated that he quit work for the employer was to help in his father's Christmas tree business. Audio at ~8:00, ~12:17, ~14:40, ~19:04. Claimant also candidly testified that the work he going to perform for his father was temporary and, at the time he quit, he knew it was not going to last beyond the month of December 2013. Audio at ~12:01; *see also* Audio at ~8:00, ~10:19. The undisputed temporary nature of this new work means that that this work was not reasonably expected to continue and, given the plain language of OAR 471-030-0038(5)(a), it did not supply good cause for claimant to leave work with the employer.

Under appropriate circumstances, however, leaving existing work to temporarily work in a family business might be a leaving for good cause under the general provision of OAR 471-030-0038(4). Such circumstances might arise, for example, if the condition of the family business was such that a

reasonable and prudent person would conclude that the business had grave needs for that person's assistance and there were no reasonable alternative ways to obtain that assistance. Here, although claimant testified that his father was 76 years-old, his father was not disabled and was still working regularly. Audio at ~ 13:03, ~20:04. Nowhere in claimant's testimony does claimant suggest that his father asked him to work for him on the Christmas tree lot in December 2013. Claimant also did not suggest that his father's business would falter if he did not provide assistance or that his father's livelihood would be placed in jeopardy. Claimant provided no compelling reasons why only he could provide assistance to his father's business and why his father could not have used the \$2,500 he paid to claimant for his work to hire an independent person to help with the business. Although claimant stated that it was a "family business" to justify why his father should not be expected to hire a non-family member, this view was inconsistent with claimant's testimony that his father regularly hired non-family members to help him harvest trees. Audio at ~12:07, ~14:05, ~17:28. Moreover, the single fact that claimant's father operated a "family business," without additional compelling factors, does not establish that there were objectively grave reasons for claimant to leave work with the employer for temporary work in that family business. Claimant did not meet his burden to demonstrate that, on these facts, a reasonable and prudent person would have left permanent employment to provide temporary assistance to a family business.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 14-UI-13230 is affirmed.

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

DATE of Service: April 15, 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.