

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0575

Hearing Decision 14-UI-13884 Affirmed, Late Hearing Request Dismissed
Hearing Decision 14-UI-14075 Affirmed, Disqualification

PROCEDURAL HISTORY: On May 3, 2013, May 9, 2013, and May 21, 2013, the Oregon Employment Department (the Department) served notice of three administrative decisions that found that claimant failed to actively seek work. On May 28, 2013, the Department served notice of administrative decision (decision #194247) assessing a \$1,874 overpayment, a \$281.10 monetary penalty and 17 penalty weeks based on the three decisions that found claimant failed to actively seek work. On June 17, 2013, decision # 194247 became final without a request for hearing being filed. On February 12, 2014, claimant filed a late request for hearing regarding decision # 194247. On February 18, 2014, the Department served notice of an administrative decision concluding claimant voluntarily left work with Amazing Grace Care Homes without good cause. (decision # 132550). On February 24, 2014, ALJ Kangas issued Hearing Decision 14-UI-10917, dismissing claimant's request for hearing regarding decision # 194247 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 14 days of the date the decision¹ was mailed. On March 3, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On March 4, 2014, claimant filed by mail a timely request for hearing on decision # 132550. ALJ Kangas reviewed claimant's response to the Appellant Questionnaire and on April 1, 2014, issued Hearing Decision 14-UI-13884, re-dismissing claimant's request for hearing on decision # 194247. On April 1, 2014, ALJ Vincent conducted a hearing on claimant's request for a hearing on decision # 132550, and on April 2, 2014, issued Hearing Decision 14-UI-14075, affirming the Department's decision that claimant voluntarily left work without good cause. On April 8, 2014, claimant filed applications for review of Hearing Decisions 14-UI-13884 and 14-UI-14075 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-13884 and 14-UI-14075. For case-tracking purposes, this decision is being issued in duplicate (Appeals Board Decisions 2014-EAB-0575 and 2014-EAB-0576).

¹ Hearing Decision 14-UI-10917

EAB reviewed the entire hearing record regarding Hearing Decision 14-UI-13884. On de novo review and pursuant to ORS 657.275(2), we adopt the ALJ's decision. Accordingly, decision # 194247 remains undisturbed. We write separately regarding Hearing Decision 14-UI-14075.

FINDINGS OF FACT: (1) Amazing Grace Care Homes employed claimant as a caregiver from March 13, 2013 to January 24, 2014.

(2) In October 2013, the employer's owner made claimant the acting care manager at one of its facilities pending her formal approval by the Oregon Department of Human Services (DHS) as a resident care manager (RCM).

(3) Beginning in November, claimant made documentation errors regarding dispensed medication and other matters for which the employer gave claimant additional training rather than written warnings. However in December, claimant made another documentation error for which an administrative assistant gave her a written warning because, according to the owner, "we had to start writing her up, you can only do so much re-educating." Transcript at 36-37. Although claimant did not dispute that she made an error, she was upset that she received the warning.

(4) In late December, the telephone used by claimant and others in her facility started generating static noise that made it difficult for users to hear individuals being spoken to on the phone. The owner replaced the phone with her personal home phone until she replaced that phone with a new one on or about January 7. Claimant, who used hearing aids in both ears, could hear better with the owner's phone than the new one and became upset when the new one was installed. However, claimant did not communicate her frustration with the new phone to the owner.

(5) On January 8, 2014, DHS notified the owner that claimant was not approved to be a resident care manager. The owner did not immediately notify claimant of the DHS decision.

(6) On or about January 15, 2014, claimant mistakenly failed to record an elderly patient's bowel movement that caused the patient to be transported and examined at an emergency room because the lack of a bowel movement for an elderly patient over a period of time was considered to be potentially "fatal." Transcript at 39. The employer issued claimant a written warning for her conduct.

(7) On January 17, 2014, the owner notified claimant of the DHS decision denying her approval as a resident care manager. Claimant became upset, almost "suicidal." Transcript at 38. The owner gave claimant some time off and offered her a caregiver position at a facility where claimant had previously worked.

(8) On January 24, 2014, while still off work, claimant notified the owner by text message that she was "not coming back" due to "problems with the company." Transcript at 35. In her text message, claimant identified the "write-ups" she had received and the letter from DHS she considered "punishment twice for what happened." Although she admitted to the owner the write-ups were based on her performance, claimant "ha[d] to do what's good for her."

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work with Amazing Grace Care Homes without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless the claimant proves, by a preponderance of the evidence, that claimant had good cause for leaving work when the claimant 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). 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.

Claimant asserted at hearing that she quit because the owner “changed phones on me...[and] didn’t make [a phone] accessible” to her, given her hearing problems. Transcript at 11. However, claimant did not quit when the alleged problem arose, did not identify a phone problem as a reason she “was not coming back” in her January 24 text to the owner, and admitted at hearing that she was still able to use the last phone the owner provided for her use. Transcript at 17. More likely than not, claimant quit for the reasons identified in her January 24 text message, namely, her dissatisfaction with the written warnings she received and her disappointment in being denied approval to work as a resident care manager.

Claimant did not have good cause to quit work for those reasons. Although claimant was unhappy about receiving the warnings in question, the first she had ever received, she did not dispute the owner’s testimony that she admitted to the mistakes the precipitated the warnings. Moreover, there was no evidence that the warnings resulted in a loss of pay or benefits, and claimant admitted she was offered the opportunity to work as a caregiver in a non-managerial role in another facility after she received the warnings. Although claimant was devastated by the state’s denial of her approval as a resident care manager, she understood that the decision was made by the state and not the employer. Under the circumstances, claimant failed to show that her concerns constituted reasons of such gravity that a reasonable and prudent caregiver of normal sensitivity, exercising ordinary common sense, would conclude she had no reasonable alternative but to reject continuing employment in the role of caregiver and become unemployed.²

Claimant had the burden to show that she quit work when she did with good cause as defined under OAR 471-030-0038(4). *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Claimant failed to meet her burden and is disqualified from receiving unemployment insurance benefits until she has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decisions 14-UI-13884 and 14-UI-14075 are affirmed.

² A claimant with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h) who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would continue to work for the employer for an additional period of time. OAR 471-030-0038(4). Claimant failed to demonstrate that her hearing problems constituted a permanent or long-term physical impairment. Even if claimant’s hearing problems constituted such an impairment, however, claimant failed to show that her disappointment over the denial of her resident manager application and her dissatisfaction with the written warnings she received created a situation of such gravity that no reasonable and prudent person with claimant’s impairment would continue working for the employer.

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

DATE of Service: May 2, 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.