

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0751

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #81206). Claimant filed a timely request for hearing. On April 15, 2014, ALJ Wipperman conducted a hearing, and on April 22, 2014 issued Hearing Decision 14-UI-15743, affirming the Department's decision. On May 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the entire hearing record and the employer's written argument when reaching this decision. Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) St. Charles Health System Inc. employed claimant as a surgery scheduler from March 1, 2010 to January 2, 2014.

(2) Claimant lived and worked for the employer in Oregon. On October 5, 2013, claimant's father-in-law died. As a result, claimant's mother-in-law lived alone in her home in Alabama. She was in poor health due to having had a stroke in 2013, and unable to see because she was blind in one eye, and had a cataract in the other eye. She was dependent on someone to assist her with most of her activities of daily life. Claimant's mother-in-law had no relatives other than claimant who were able to care for her. Claimant's husband was disabled and unable to care for his mother on his own. The family was unable to afford to pay for the full-time care claimant's mother-in-law required.

(3) Claimant told her supervisor about her mother-in-law's health conditions, and that claimant needed to go to Alabama to take care of her. Claimant was unable to determine at that time how long she would need to be in Alabama, or if she would have to stay in Alabama permanently. The supervisor did not tell

claimant if she had any options regarding a leave of absence from work. Claimant was not aware of any options she might have for a leave of absence in her circumstances.

(4) On January 2, 2014, claimant quit work to move to Alabama to care for her disabled and ill mother-in-law.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit work with good cause.

A claimant who quits work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause to quit work when she 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,” as defined by OAR 471-030-0038(f), necessitates a claimant’s care. 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 her employer for an additional period of time.

In Hearing Decision 14-UI-15743, the ALJ concluded that claimant’s decision to leave work was not based on a “compelling family reason” under OAR 471-030-0038(1)(e), because that rule applies where an individual quits work due to the illness or disability of an immediate family member, which does not include an individual’s mother-in-law.¹ We agree that OAR 471-030-0038(f) provides a list of family members considered to be “immediate family” that does not include a parent-in-law.

The ALJ also concluded that claimant did not quit with good cause under OAR 471-030-0038(4) because claimant “did not show she was without reasonable alternatives to quitting her job,” because she could have requested a leave of absence for a “period of time” while claimant determined whether her move to Alabama was temporary or permanent.² We disagree. Claimant quit work to move to Alabama to care for her ailing mother-in-law. The record shows that claimant’s mother-in-law was blind and unable to care for herself, and that claimant was the only person able to care for her. Claimant testified at hearing that she informed her supervisor of her mother-in-law’s circumstances and claimant’s need to care for her, but did not ask for a leave of absence because she did not know that a leave of absence was a possibility and “[her] supervisor never suggested to [claimant] that it could be an option.” Audio Record ~ 19:34 to 19:51. Claimant also testified that the duration of her stay in Alabama was uncertain when she left work, and that she did not know if her stay in Alabama would be for “six months or if she would stay [in Alabama] permanently.” Audio Record 19:53 to 20:06. The record does not show claimant was aware of her rights under family medical leave laws or that the employer had a leave policy that it communicated to claimant. Nor does the record show that a request for leave for an extended, indefinite period of time would have been granted, and not futile. Absent such showings, we

¹ Hearing Decision 14-UI-15743 at 3.

² *Id.*

cannot find that requesting and taking an indefinite leave of absence was a reasonable alternative to quitting.

The ALJ further concluded that claimant had the option of staying in Oregon and working while her husband traveled to Alabama to care for his mother.³ Claimant testified that her husband was disabled and not able to care for his mother. Audio Record ~ 15:08 to 15:21. Nor do we presume it reasonable to require claimant to be separated from her husband indefinitely, especially after the recent loss of a parent, to qualify to receive unemployment benefits.

Under the circumstances, we find that no reasonable and prudent person in claimant's situation would have continued to work for the employer rather than to move to Alabama with her husband to care for her ailing mother-in-law. Claimant quit work with good cause under OAR 471-030-0038(4), and is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 14-UI-15743 is set aside, as outlined above.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: June 6, 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.

³ Hearing Decision 14-UI-15743 at 3.