

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0773

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140241). Claimant filed a timely request for hearing. On April 17, 2014, ALJ Vincent conducted a hearing, and on April 25, 2014, issued Hearing Decision 14-UI-16186, concluding affirming the Department's decision. On May 7, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) USCC Payroll Corporation employed claimant as a business account manager from September 2, 2010 to January 28, 2014.

(2) Claimant became pregnant and scheduled the start of her maternity leave for May 13, 2013. Claimant desired to work from home after her child's birth and prior to the start of her leave her supervisor granted her request to telecommute from home when she was ready to return to work. In August 2013, while still on leave, claimant spoke to her new supervisor who expressed reservations about the telecommuting arrangement but did not forbid it. In October 2013, claimant turned down a telecommuting job with a different employer based on her belief the employer would permit her to telecommute upon her return to work.

(3) Claimant's child was born with a seizure disorder. Claimant hired a nanny to assist her with her child's care and left her child with the nanny for up to four hours at a time based on her comfort level with the nanny's ability to handle emergencies. Claimant extended her leave as long as possible and was scheduled to return to work on January 13, 2014. A few days prior to her return, she spoke to her new supervisor who did not tell her telecommuting would not be allowed.

(4) Claimant worked from home on January 13. However, the next day her new supervisor told her she would not be permitted to telecommute and required her to work at the employer's office, 30 minutes

away, beginning the next day. Claimant became upset at the change in work arrangements and continued to work from home. At the end of the week, the supervisor and a human resources employee spoke with claimant by phone and notified her that she needed to apply for permission to telecommute for such an arrangement to be considered, which she did shortly thereafter, but that she was expected to report for work at the employer's office until a decision was made.

(5) Claimant continued to work from home although the employer had not approved her application to telecommute. The employer then notified claimant by letter that unless she reported to the office, her employment would be terminated. Claimant continued to work from home because she believed the employer "had switched the game on me" and wanted to put herself in a position where the employer "had to come to the table...and negotiate this." Audio Record ~ 15:45 to 16:30. However, on January 28, 2013, the employer terminated her access to the employer's computer network and ability to work from home. The next week claimant met with her supervisor, who directed her to return the employer's property.

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

At hearing, claimant asserted she was discharged. Audio Record ~ 11:15 to 11:45. However, 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). The employer made it clear to claimant at least three times before it denied claimant remote access to the employer's computer network, that for her to continue her employment, she needed to report for work at the employer's office, which she chose not to do. Because claimant could have continued to work for the employer indefinitely had she chosen to report for work at the office, the work separation was a voluntary leaving and occurred on January 28, 2013.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). 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 refused to report for work at the employer's office because she was uncomfortable with being away from her son more than four hours at a time, believed the employer had "switched the game on [her]" and wanted to force the employer "had to come to the table...and negotiate." However, claimant failed to show that it was medically necessary for her, rather than her child care provider who previously had cared for the child for up to four hours, to remain at home to care for the child or that no reasonable and prudent person in her circumstances would have acknowledged the employer's right to change its position on her previously negotiated telecommuting arrangement and agreed to work at the employer's office at least until her formal application to telecommute had been acted upon. Consequently, claimant failed to meet her burden to show that she had no reasonable alternative but to quit when she did.

Claimant voluntarily left work without good cause and 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-16186 is affirmed.

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

DATE of Service: June 19, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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