

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1095

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 132156). Claimant filed a timely request for hearing. On June 3, 2014, ALJ Murdock conducted a hearing, and on June 5, 2014 issued Hearing Decision 14-UI-19026, affirming the Department's decision. On June 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asserted that the hearing proceedings were unfair or the ALJ was biased. We reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) Veterans Health Administration employed claimant as a medical research technician from December 29, 2013 to April 3, 2014.

(2) On March 27, 2014, the employer notified claimant that it was discharging her, effective April 11, 2014, for excessive absences and chronic tardiness. Claimant's request for a medical accommodation that would excuse her absences and tardiness was still pending at that time. Claimant did not perform services for the employer after March 27, 2014.

(3) On April 3, 2014, the employer informed claimant that she would not be discharged on April 11, 2014, and that the employer would not decide whether to discharge claimant until it determined whether to grant her request for a medical accommodation that would excuse her absences and tardiness. Claimant replied that she was unwilling to continue working for the employer.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

OAR 471-030-0038(2)(b) (August 3, 2011) provides that if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a quit. OAR 471-030-0038(2)(a).¹ A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting 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 quit work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 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.

On April 3, 2014, the employer allowed claimant to continue working for the employer for an indefinite period of time, at least until the employer determined whether to discharge claimant for excessive absences and chronic tardiness, or grant her request for a medical accommodation that would excuse those absences and tardiness. However, claimant was not willing to continue working for the employer. Because claimant could have continued working for the employer for an additional period of time after April 3, 2014, the work separation is a quit. We infer that claimant quit work to avoid a potential discharge for excessive absences and chronic tardiness. However, claimant failed to show that, more likely than not, the employer was going to deny her request for a medical accommodation that would excuse her absences and tardiness. Absent a showing that her discharge was reasonably certain, claimant failed to establish that she had no reasonable alternative but to quit work.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-19026 is affirmed.

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

DATE of Service: July 25, 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.

¹ For purposes of OAR 471-030-0038(2), “work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (August 3, 2011).

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