

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1219

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 145842). Claimant filed a timely request for hearing. On June 18, 2014, ALJ Clink conducted a hearing, and on June 27, 2014 issued Hearing Decision 14-UI-20583, affirming the Department's decision. On July 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and 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) Public Utility Commission of Oregon employed claimant as an accounting technician from March 9, 2010 to January 15, 2014.

(2) Claimant was unhappy with his job after he was given additional job duties when a coworker retired in April 2013. Claimant experienced health issues he speculated were related to his exposure to mold discovered in the employer's building in December 2012. The employer took steps to eliminate the mold at the time, and moved to a new building in August 2013. Claimant was not advised by a doctor to leave work for medical reasons and he did not request time off work to resolve his health issues prior to leaving the job.

(3) Claimant applied to work for the employer as an accountant and learned he did not meet the minimum qualifications for the position. Claimant was dissatisfied with the job application process, and notified the employer he was quitting work, effective January 15, 2014. In his resignation letter, claimant stated that he was quitting because the employer could not provide him with the level of "personal and professional growth" he needed. Audio Record at 28:00.

(4) Claimant advised the employer he was leaving for another job in the private sector and also told the employer he planned to work on the book he was writing. Claimant did not have an offer of other work pending.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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 P3d 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. Quitting work without good cause includes quitting suitable work¹ to seek other work, or for self-employment. OAR 471-030-0038(5)(b)(A) and (G).

Claimant notified the employer that he was quitting work after his application to work for the employer as an accountant was denied, the employer could not provide him with the level of “personal and professional growth” he needed. Claimant later told the employer he was leaving work for another job in the private sector, but did not have an offer of other work pending, and also stated that he planned to work on the book he was writing. However, claimant failed to show that no reasonable and prudent person would have continued working for the employer as an accounting technician after his application to work as an accountant was denied, or that accounting technician work itself was not suitable for claimant. Thus, to the extent claimant quit work because his application was denied, to seek other work in the private sector, or for self-employment in writing a book, he quit work without good cause.

In written argument, as at hearing, claimant asserted that he also quit work because of health issues he believed were related to his exposure to mold discovered in the employer’s building in December 2012, despite the fact that the employer taken steps to eliminate the mold at the time, and moved to another building in August 2013. At hearing, however, claimant admitted he was not certain his health issues were related to his exposure to mold, and that no doctor had told him they were. Audio Record at 14:00, 17:00. Claimant further admitted that he had seen an allergist regarding his health issues, and had made “some progress.” Audi Record at 17:30. Claimant failed to show that his health issues were related to his exposure to mold in the employer’s old building, or so severe that he could not continue to work for the employer in its new building, where no mold had been detected. Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

¹ In determining whether any work is suitable for an individual, the Department considers, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. ORS 657.190.

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

DECISION: Hearing Decision 14-UI-20583 is affirmed.

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

DATE of Service: August 14, 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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