

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1286

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 110450). Claimant filed a timely request for hearing. On July 7, 2014 ALJ Triana conducted a hearing, and on July 8, 2014, issued Hearing Decision 14-UI-21306, affirming the administrative decision. On July 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Stokes Construction Company employed claimant from November 4, 2011 to April 17, 2014, last as a log truck driver.

(2) The employer gave claimant permission to take the log truck home and use it to commute to work. The employer paid for insurance coverage for claimant's use of the employer's vehicle.

(3) In May 2012, while driving his personal vehicle, claimant received a citation for excessive acceleration. In December 2013, while driving the employer's vehicle, claimant received a citation for speeding. In February 2014, while driving his personal vehicle, claimant received a citation for speeding.

(4) On April 17, 2014, the employer learned that the cost of insuring claimant to drive for the employer would be extremely high because of the third citation claimant had received. The employer did not want to pay the cost of insuring claimant, and offered claimant a position as an equipment operator. As an equipment operator, claimant would not drive any of the employer's vehicles.

(5) In April 2014, claimant did not have a working car. His car had broken down and he needed to replace the transmission in it. Claimant could not afford the cost of a new transmission, which was \$1,200; he had searched for a used transmission in a number of junk yards but was unable to find one. Without a personal vehicle and without the use of the employer's log truck, claimant had no way to get to work. Claimant's wife had a car, but needed it to get to her job. Claimant and his wife, who was pregnant, had a young child and his wife's salary was essential to support the family. Although the employer would have been willing to loan claimant the money needed to pay for a new transmission, claimant did not want to accept a loan because the value of his car was less than \$1,200.

(6) On April 17, 2014, claimant voluntarily left work for the employer because he had no way to get to work.

CONCLUSION AND REASONS: We disagree with the ALJ, and conclude that claimant voluntarily left work with 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.

The ALJ concluded that claimant had two reasons for quitting his job: his unwillingness to accept a position as an equipment operator and his lack of transportation to get to work. Although claimant admitted that he did not like working as an equipment operator, he testified that he probably would have accepted the equipment operator position if he had a working car, and explained that his "biggest reason for not taking the job was transportation back and forth." Audio ~ 29:01. Contrary to the ALJ's conclusion, then, we will consider claimant's lack of transportation as the proximate cause of his decision to leave work.

In regard to claimant's car problems, the ALJ concluded that "[w]hile not having transportation to get to and from [work] would be a grave situation, claimant did not pursue the reasonable alternative of getting a loan from the employer to pay for a new transmission." We disagree. While we agree that claimant's lack of a working car presented a grave situation, we do not find that taking out a substantial loan to fix his car was a reasonable alternative to quitting his job. A reasonable and prudent person weighs the value of a car against the cost of repairing it. Claimant chose to voluntarily leave work rather than incur a \$1,200 debt to fix a car with a value of less than \$1,200. Claimant's actions were those of a reasonable and prudent person of normal sensitivity, exercising common sense. Claimant voluntarily left work with good cause, and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Hearing Decision 14-UI-21036 is set aside, as outlined above.

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

DATE of Service: September 5, 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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