

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1305

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On June 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 73545). Claimant filed a timely request for hearing. On July 11, 2014, ALJ Kirkwood conducted a hearing, and on July 14, 2014 issued Hearing Decision 14-UI-21487, affirming the Department's decision. On August 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Adams Leonard Insurance Inc. employer claimant as a customer service representative from March 20, 2006 to March 31, 2014.

(2) On December 9, 2013, claimant returned to work for the employer after maternity leave. Claimant heard that the employer's owner had made a racially insensitive comment about her daughter, stating that she was "sunburnt."

(3) Claimant requested that the employer cancel health insurance benefits for her daughter. The employer initially failed to do so. When claimant complained, the employer confirmed that she would not be charged for the insurance premiums for her daughter from the time the daughter's benefits should have been cancelled.

(4) The employer required claimant to reimburse the employer for health insurance premiums it paid on her behalf while she was on maternity leave. Claimant believed other employees had not been required to reimburse the employer for health insurance premiums it paid on their behalf while they were on maternity leave. Claimant believed that she was being treated differently than other employees.

(5) On February 25, 2014, claimant sent the owner an email outlining her concerns, questions, and complaints, including those about the racially insensitive comment about her daughter. However, claimant did not identify who allegedly made the comment. Claimant's supervisor, who also was the employer's human resources representative, responded to claimant's email. The supervisor offered to

address the issues in a meeting with the employer's executives, including the owner, at claimant's request. However, claimant did not request a meeting.

(6) On March 25, 2014, claimant met with her supervisor for a scheduled performance review. Claimant re-iterated her concerns that she felt were not answered in her supervisor's email. Claimant alleged that the owner had made the racially insensitive comment about her daughter. Claimant's supervisor refused to address claimant's concerns during the performance review, but offered to schedule a meeting with claimant and the owner after checking the owner's schedule. Claimant instead notified the employer she was quitting work, effective March 31, 2014.

(7) Claimant quit work because her supervisor refused to address her concerns during the performance review.

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 she 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) (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.

In the present case, claimant quit work because her supervisor refused to address her concerns that the employer's owner had made a racially insensitive comment about her daughter, and that the employer had failed to cancel health insurance benefits for her daughter as requested, required her to reimburse the employer for health insurance premiums it paid on her behalf while she was on maternity leave, and was treating her differently than other employees. However, it was not unreasonable for claimant's supervisor to refuse to discuss claimant's concerns during a performance review, especially given that she twice offered to schedule a meeting with the employer's executives, including its owner, to discuss claimant's concerns. Claimant had only second-hand information that the owner had made one racially insensitive comment about her daughter. The employer corrected its initial failure to comply with claimant's request that it cancel health care benefits for her daughter. Although claimant believed the employer was treating her differently than other employees in other respects, her situation was not 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 rather than meet with the owner to discuss her concerns. Claimant therefore failed to show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant quit work without good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-21487 is affirmed.

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

DATE of Service: September 8, 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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