

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1368

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On June 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161551). Claimant filed a timely request for hearing. On July 28, 2014, ALJ Murdock conducted a hearing, and on July 31, 2014 issued Hearing Decision 14-UI-22563, affirming the Department's decision. On August 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Franklin Company employed claimant as a laboratory technician from March 11, 2014 until May 12, 2014. The employer was a staffing agency and it assigned claimant to work for one of its clients, a chemical company, in Portland, Oregon. Claimant's assignment to the chemical company was of an indefinite duration.

(2) At the time claimant started working, claimant was in the early stages of pregnancy. Claimant observed that the heating ventilation and air control (HVAC) system in the client's laboratory was not operating as intended and volatiles from chemicals were not being removed from the air. Claimant raised her concerns about the presence of volatiles in the laboratory air at two safety meetings held by the chemical company. Claimant spoke to her physician and the physician stated that, due to her pregnancy, she should limit her exposure to these volatiles. In approximately mid-April, after the second safety meeting, the chemical company retained the services of a specialist to evaluate the functioning of the HVAC system. Claimant did not notify the employer of any concerns she had with the chemical company's HVAC system or her exposure to volatiles from chemicals in the workplace.

(3) Sometime before May 12, 2014, claimant learned that a surgery was scheduled for her mother on May 28, 2014. Claimant later learned that what she had thought was going to be a "routine surgery" for her mother was actually going to be a far more complicated "experimental" surgery. Audio at ~5:08. Claimant's mother lived in Minnesota and the mother's physicians estimated that her recovery from the surgery would take between three and six months. Claimant's mother had no family in Minnesota to care for her during her convalescence from the surgery. Claimant had one sibling, who lived in New

York. The sibling was not able to leave New York to care for the mother for the estimated period of the mother's recovery. Claimant concluded that she needed to leave Oregon to provide care for her mother in Minnesota during the mother's convalescence.

(4) When claimant learned of the need to relocate at least temporarily from Oregon, she did not ask the employer for time off or a leave of absence to provide care for her mother. Audio at ~5:28. Based on claimant's recollection of some papers she had received when she was newly hired, claimant was under the impression that the employer would not authorize a leave of absence for her because she had not been employed for at least ninety days when she needed to leave Oregon. Audio at ~5:28. Claimant did not ask any representatives of the employer if her impression was accurate. In fact, the employer did not prohibit leaves of absence to employees based on the length of time they had worked. The employer would have authorized a leave for claimant if she had asked for one since she was an "excellent" employee and since, in the past, the employer had authorized leaves under similar circumstances for employees assigned to work for various clients. Audio at ~11:38, ~12:30, ~13:58.

(5) On May 12, 2014, claimant sent an email to the employer notifying it that she was resigning from work, effective immediately. As her reasons for quitting, claimant stated that her relationship with her boyfriend had "deteriorated to the point where I have decided to go back to MN ASAP" and her doctor had advised her to "stop working with chemicals during my pregnancy." Exhibit 2 at 1. Despite the reasons that claimant cited to the employer, the actual reason she was quitting was to care for her mother in Minnesota. Audio at ~16:54, ~21:11. Regardless of claimant's exposure to chemical volatiles in the workplace, claimant would have continued to work for the employer in the laboratory of the chemical company for at least two more months had her mother not had the surgery. Audio at ~17:24, ~22:30, ~21:05. Claimant thought that, even if the chemical company's HVAC system remained nonfunctioning, she would have been able to keep her exposure to chemical volatiles to a safe level during her pregnancy by taking certain non-mechanical measures, such as opening the doors and windows to the laboratory or going to a different room when the volatiles were in the air. Audio at ~20:46.

(6) On May 12, 2014 and thereafter, claimant did not return to the workplace. Shortly after May 12, 2014, claimant returned to Minnesota.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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). Leaving work for good cause includes leaving work for compelling family circumstances. OAR 471-030-0038(5)(g). "Compelling family circumstances" exist when, among other things, the illness or disability of an immediate family member necessitates care by claimant and claimant's employer does not accommodate claimant's request for time off to provide that care. OAR 471-030-0038(1)(e)(B). The standard for determining if good cause exists 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.

Claimant candidly conceded that she left work to provide care for her mother in Minnesota, and not for the reasons that she had stated to the employer in her May 12, 2014 email. Audio at ~16:54. Moreover, claimant also conceded that, absent her mother's need for her help, she would not have quit work when she did, but would have remained working for at least two more months. Audio at ~16:54, ~20:30, ~21:05. The focus of the analysis therefore narrows to whether claimant had good cause to leave work to provide care to her mother.

At the outset, it is not disputed that claimant did not ask for time off from the employer before she decided that she needed to quit work. Accordingly, OAR 471-030-0038(5)(g) and OAR 471-030-0038(1)(e)(B) do not provide good cause for claimant's decision based on "compelling family circumstances" because the employer did not fail to accommodate any request from claimant. Under the general good cause provision of OAR 471-030-0038(4), claimant also did not show that, when she decided to quit, her mother's need for care constituted a grave reason that left her no choice but to leave work. Although claimant testified that she did not ask for a leave of absence from the employer because she was under the impression that she had not been employed for a sufficient amount of time to obtain one, she did not dispute the testimony of the employer's witnesses that they were not aware of any such policy and they would have authorized a leave for claimant to enable her to provide care for her mother. Audio at ~5:28, ~11:38, ~13:58, ~15:51. A reasonable and prudent laboratory technician, exercising ordinary common sense and who wanted to remain employed, would not have concluded that she needed to leave work based on a vague recollection of the employer's policies, but would reasonably have inquired whether she qualified for a leave and would not have left work until she had a reliable information that the employer would not authorize one. Because claimant did not take the steps of a reasonable and prudent person to try to preserve her employment before she quit work, claimant did not demonstrate that good cause supported her decision to leave when she did.

Claimant did not show good cause for leaving work. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-22563 is affirmed.

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

DATE of Service: September 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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