EO: 200
BYE: 201522

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

217
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1420

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 75348). Claimant filed a timely request for hearing. On August 6, 2014, ALJ R. Frank conducted a hearing, and on August 14, 2014 issued Hearing Decision 14-UI-23412, affirming the Department's decision. On August 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. Claimant asserted in his written argument that the ALJ failed "to adequately analyze the findings of fact in this case, did not allow adequate cross-examination of the witnesses on the record, and did not conduct adequate analysis in its [sic] conclusions of law." (Claimant's Written Argument, p. 5). 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), including the opportunity for adequate cross-examination of the witnesses. For the reasons stated in this decision, we agree with the ALJ's analysis of the facts and conclusions of law. We considered claimant's remaining arguments to the extent they were based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Funtime RV Inc. employed claimant as a salesperson from March 16, 2011 to June 12, 2014.

(2) Claimant's mother-in-law lived with claimant and his wife after suffering a stroke, and relied on them to drive her to appointments, prepare her meals, and bathe her. Claimant's 15-year-old grandson, and occasionally his 4-year-old grandson, spent Fridays and Saurdays with claimant. Claimant agreed to

work for the employer based on the owner's assurance that he would not be required to work on Fridays or Saturdays.

(3) The employer scheduled claimant to work from approximately 8:30 a.m. to 6:00 p.m., Sundays through Thursdays. Claimant earned over $90,000 per year working for the employer. Claimant's wife was a realtor, and was able to flex her work schedule to care for her mother when claimant was at work. Claimant's wife earned $12,000 to $24,000 per year working as a realtor.

(4) In late May or early June 2014, the employer informed claimant that he would be required to work Saturdays with Thursdays and Fridays, or Monday and Tuesdays, off from work. Claimant did not ask for time off from work to care for his mother on during the day on Saturdays until he found someone else to do so. The employer was willing to allow claimant time off to find someone else to care for his mother-in-law during those times.

(5) On June 12, 2014, claimant notified the employer that he was unwilling to work on Saturdays, and therefore resigning, effective that day.

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 work separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the separation is a voluntary leaving. OAR 471-030-0038(2)(a). 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 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). 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. Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). "Compelling family reasons" means the illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off. OAR 471-030-0038(1)(e). "A member of the individual's immediate family" includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

In written argument, as at hearing, claimant asserted that the employer discharged him when it "terminated his [employment] contract" by requiring him to work Saturdays. For purposes of OAR 471-030-0038(2), however, "work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. *Id*. In the present case, it is undisputed that claimant could have continued his relationship with the employer for an additional period of time if he had agreed to work

Saturdays. Claimant instead severed the employer-employee relationship by notifying the employer that he was resigning. The work separation therefore is a voluntary leaving, and not a discharge.

Claimant quit work because if he was required to work Saturdays, he would no longer be available to spend time with his grandchildren or care for his mother-in-law on that day. However, claimant failed to establish that the employer was contractually or otherwise legally prohibited from changing his work schedule. Although claimant's desire to continue spending more time with his grandsons on Saturdays was understandable, he failed to show that being unable to do so was a situation of such gravity that no reasonable and prudent person would have continued to work for his employer for an additional period of time. The employer was willing to allow claimant time off to find someone else to care for his mother-in-law on Saturdays. Claimant failed to show his wife could not have flexed or reduced her work schedule to care for her mother on Saturdays until she and claimant found someone else to do so. Nor did claimant ask the employer for time off to care for his mother on Saturdays until he and his wife found someone else to do so. Claimant therefore did not quit work with good cause under OAR 471-030-0038(5)(g) and OAR 471-030-0038(1)(e), or establish that he had no reasonable alternative but to quit work when he did, as required under OAR 471-030-0038(4).

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

DECISION: Hearing Decision 14-UI-23412 is affirmed.

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

DATE of Service: <u>October 3, 2014</u>

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.

<u>Please help us improve our service by completing an online customer service survey</u>. To complete the survey, please go to https://www.surveymonkey.com/s/5WQXNJH. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.