

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1655

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 21, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 145053). Claimant filed a timely request for hearing. On September 25, 2014, ALJ Seideman conducted a hearing, and on September 30, 2014 issued Hearing Decision 14-UI-26117, reversing the Department's decision and concluding claimant voluntarily left work with good cause. On October 17, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Granite Taphouse, LLC employed claimant as a line cook in a restaurant from May 16, 2014 until July 6, 2014.

(2) Claimant was a single mother with three minor children, ages 9, 10 and 11. Claimant arranged for a child care provider to care for her children when she was working.

(3) When the employer hired claimant, it was understood that claimant would work between 24 and 30 hours per week. Once their summer vacation started in early June 2014, and claimant's children were out of school, claimant's child care provider agreed to care for the children for 6 hours a day and a maximum of 30 hours per week. Initially, claimant's work schedule during the summer was approximately 8 hours per day on Sundays and approximately 6 hours per day on Mondays, Tuesdays and Wednesdays, for a total of approximately 24 hours per week. With this work schedule, claimant's child care provider was able to care for the children when she worked.

(4) Sometime around June 16, 2014, the employer's head chef and another employee left work without notice. As an interim measure of uncertain duration, the employer scheduled its remaining employees to work longer hours to make up for the absences of the chef and the other employee. The employer started scheduling claimant for substantially longer hours than she had anticipated when she was hired and for longer hours than her child care provider was willing to care for her children. Some days, the employer had claimant work more than 10 hours. For the week of June 16 through June 22, 2014,

claimant worked 49 hours. For the week of June 23, 2014 through June 29, 2014, claimant worked 34 hours. Because claimant's child care provider was unable to care for the children all of the hours that claimant worked, claimant was required to leave the children alone and unattended in order to work. Claimant was not able to arrange for an alternate child care provider to care for her children during the significantly extended hours the employer was scheduling her to work. Claimant disliked leaving the children alone for such long periods of time.

(5) At some point after June 16, 2014, claimant told the employer that she could not continue working the hours that she was scheduled because it required to leave her children unsupervised. The employer did not agree to reduce claimant's hours, but told claimant to "hang tough" until new employees were hired and she was no longer required to "pick up the slack." Audio at ~13:00, ~16:33.

(6) Over the workdays of approximately Monday, June 30, 2014 through Wednesday July 2, 2014, claimant worked 26 hours, or over approximately 8 hours per work day. Claimant concluded that the employer was not going to reduce her hours and that, to remain employed, she needed to leave her children unsupervised when she was working. On July 6, 2014, claimant told the employer that she was quitting work to provide care for her children.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless [she/he] proves, by a preponderance of the evidence, that [she/he] 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.

The employer's witness did not dispute that, when claimant was hired, she reasonably understood she would not work hours in excess of 30 hours per week or more than 6 hours on any given day except on Sundays when she would work 8 hours. Although there was some confusion in the testimony of the employer's witness about the number of hours claimant was actually scheduled to work during the period of June 16 through June 30, 2014, accepting the witness's testimony that claimant worked a total of 83 hours during this two week period and that she worked 49 hours during the week of June 16 through June 22, 2014, the necessary conclusion is that claimant was scheduled to work 34 hours during the week of June 23 through June 29, 2014, not the 27 hours that the witness initially stated. Audio at ~17:49, ~19:16, ~20:38. By the admission of the employer's witness, claimant worked more than eight hours on at least six occasions during her employment, which exceeded the availability of claimant's child care provider. The preponderance of the evidence shows that claimant was working hours substantially exceeding what she thought that she was going to be working and that exceeded the willingness and ability of her child care provider to care for her children. The employer's witness also agreed that claimant told her she could not continue to working these longer hours and the witness did not dispute that the employer did not agree to reduce claimant's scheduled work hours as a result of her complaint. Audio at ~ 16:33. It also was not disputed that claimant was unable to make alternate

arrangements for child care that would allow her to work the longer hours that the employer was scheduling her for.

Claimant's unwillingness to leave her children unsupervised for significant periods when she was working was not unreasonable given the ages of the children. Claimant reasonably had concerns for their safety and well-being if it was necessary to leave them to fend for themselves alone and, although she had tried, she was unable to make arrangements with other child care providers to accommodate the longer hours that the employer was scheduling her to work. Claimant's concerns were likely compounded by the employer's unwillingness to reduce her hours after she complained and its unwillingness to give her any specific date on which her work hours would return to those that she had initially understood she would be working and for which she had made child care arrangements. On these facts, a reasonable and prudent employee, exercising ordinary common sense, would have reasonably concluded that she needed to quit work to attend to her children when, after asking her employer not to continue scheduling her for significantly increased hours due to her child care needs, the employer did not agree to do so, but vaguely stated only that she needed to "hang tough" for an indefinite period. On the facts as presented, it appears that claimant's concern over her children's well-being was a grave reason to leave work.

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

DECISION: Hearing Decision 14-UI-26117 is affirmed.

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

DATE of Service: December 2, 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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