

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1706

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143418). Claimant filed a timely request for hearing. On October 13, 2014, ALJ R. Davis conducted a hearing at which the employer did not appear, and on October 20, 2014 issued Hearing Decision 14-UI-27214, affirming the Department's decision. On October 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Legacy Emanuel Hospital & Health Center employed claimant as a patient access representative from February 11, 2012 until August 7, 2014. Claimant lived and worked in Portland, Oregon.

(2) Claimant had an eight year old daughter who lived in San Diego, California with her mother. The mother had been awarded sole physical custody of the daughter. Claimant's daughter experienced seizures and took prescribed medications to control them. The daughter's mother cared for the daughter, and arranged for other people to provide care when she was working.

(3) Claimant periodically visited his daughter in San Diego for a few days at a time to "watch her" and "just be[] present." Audio at ~17:40, ~19:20. Between approximately May 7, 2014 and August 7, 2014, claimant missed five days of work to visit his daughter in San Diego. Audio at ~16:10.

(4) Sometime before August 7, 2014, claimant asked his supervisor if he could change his job status to that of a "supplemental" employee. Audio at ~8:00, ~15:05. Working in a supplemental status meant that claimant would be on call for work. Claimant thought that supplemental status would allow him greater flexibility to arrange for time away from work to visit his daughter while still allowing him to work close to full-time hours when he chose. The supervisor did not allow the change in claimant's job classification because the supervisor wanted claimant to work "reliable" hours. Audio at ~15:48. Claimant did not ask his supervisor or the employer's human resources department if there were any

alternatives other than a supplemental employment status to enable claimant to visit more often with his daughter.

(5) On approximately July 24, 2014, claimant gave the employer notice that he was quitting work in two weeks. Claimant's stated reason for quitting work was relocate to San Diego to be closer to his daughter. On August 7, 2014, claimant quit work and did not return to the workplace.

(6) After claimant left work he did not relocate to San Diego because he could not afford to move. He instead moved to Wyoming, where his family lived.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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). Leaving work for good cause includes leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). The standard for determining good cause 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.

In view of claimant's contention that he quit work due to his daughter's condition and his need to live in closer proximity to her, the first issue this case presents is whether claimant demonstrated the type of "compelling family reasons" that constitute good cause to leave work. Audio at ~6:20. "Compelling family reasons" exist when, among other things, 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 individual's request for time off to provide that care. OAR 471-030-0038(1)(e)(B). Here, although claimant might have desired to live closer to his daughter, there was little evidence that the daughter's health condition necessitated that claimant provide care for her. It appeared from the hearing record that claimant's daughter was adequately cared for by her mother in California, and there was no suggestion that the daughter's well-being was jeopardized either by her mother or the babysitters that the mother arranged. Audio at ~10:30, ~10:46, ~18:04, ~18:37. While claimant might have wanted to watch his daughter when her mother was working and might have thought he could better administer her medication to her than her mother or her babysitters, these preferences are not the types of exigencies that comprise compelling family reasons when it is not shown that the level of care being provided is deficient. Audio at ~18:37. In addition, claimant also did not establish that he specifically asked the employer for time off to care for his daughter and that the employer did not accommodate his request. It was not clear from the record that claimant's ever informed his supervisor that he was requesting the change to a supplemental employment status to allow him to care for his daughter in California or that claimant ever asked the employer what he could do to remain employed while still providing care for his daughter in California. Audio at ~8:00, ~14:36, ~16:58. On the facts that he presented, claimant did not show that his daughter's condition was a "compelling family reason" within the meaning of OAR 471-030-0038(1)(e) that supplied good cause for him to leave work when he did.

For similar reasons, claimant also did not show that his daughter's health condition and his desire to live nearer to the daughter constituted a grave reason to leave work under the general good cause provision of OAR 471-030-0038(4). As discussed above, claimant did not show that his daughter had not been, or was not receiving adequate care from her mother for her medical condition or otherwise. Claimant also did not show that the level of care the mother provided was likely to deteriorate in the future or that the mother even wanted him to assume a greater role in caring for the daughter. At best, claimant demonstrated only that he desired to be more active in caring for his daughter and wanted to see her more often than he thought that his work schedule allowed. Although claimant's desire to spend more time with his daughter is understandable and laudable, a reasonable and prudent employee in claimant's circumstances would not have concluded that increasing his level of participation in caring for his daughter was a grave reason requiring him to leave work immediately. In addition, since claimant contended that he sought the change to a supplemental employment status to allow him to continue working significant hours in Portland while increasing the time that he saw his daughter in California, it does not appear that claimant actually intended to provide care for his daughter in California every day, and that he merely wanted greater flexibility in scheduling his visits to his daughter. Audio at ~ 15:35. Under these circumstances, a reasonable and prudent employee who wanted to continue working for the employer would not have quit work only to increase his flexibility in visiting his daughter and, if the employee considered that flexibility important, he would have asked the employer if there were any options available to give him more opportunities to visit his daughter at the times when he so desired. On this record, claimant did not meet his burden to show that grave reasons compelled him to leave work.

Claimant did not show that he had good cause to leave work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-27214 is affirmed.

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

DATE of Service: December 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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