

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1813

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 90701). Claimant filed a timely request for hearing. On November 10, 2014, ALJ R. Davis conducted a hearing, and on November 19, 2014 issued Hearing Decision 14-UI-29007, affirming the Department's decision. On November 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Columbia Care Services Inc. employed claimant as a residential associate from March 18, 2013 to August 9, 2014.

(2) As a residential associate, claimant performed caregiver work for individuals suffering from mental illness. In July 2014, four employees reported to the employer that claimant was failing to administer a prescribed breathing medication to a client. On July 16, 2014, the employer gave claimant a written warning, in part, for failing to administer the medication to the client. The written warning stated that, effective immediately, claimant was expected to administer all prescription medications to clients per their doctor's order, or he would be discharged. The warning also stated that, at claimant's request, he would be retrained on how to administer the breathing medication.

(3) The employer had no intention of discharging claimant at that time. The employer did not intend, or indicate that it intended, to report claimant's alleged conduct to the Oregon Board of Nursing.

(4) Claimant quit work in response to the written warning, asserting that he would not continue working for an employer that "writes employees up under false information." Exhibit 1.

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 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). 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.

At hearing, claimant asserted that he quit work in response to the July 16, 2014 written warning because he was administering the breathing medication to the client, and, “I felt that my license was in jeopardy, my CNA license, because not giving medications can be considered neglect. And if it were to be reported to state I could lose my license and that is my career. And so I felt that at that point that my career was in jeopardy and I didn’t want to continue working with them.” Transcript at 19-21. However, the record fails to support claimant’s “feeling” that his CNA license and career were in jeopardy. Nor did claimant show that quitting work reduced the probability that the employer would report his alleged conduct to the Oregon Board of Nursing. Absent such showings, claimant failed to establish that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits based on his work separation from the employer.

DECISION: Hearing Decision 14-UI-29007 is affirmed.

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

DATE of Service: January 5, 2015

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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