

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1831

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 142608). Claimant filed a timely request for hearing. On November 14, 2014, ALJ Murdock conducted a hearing at which the employer failed to appear, and on November 17, 2014 issued Hearing Decision 14-UI-28795, affirming the Department's decision. On December 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Crestwood Inc. employed claimant as a CNC operator from March 25, 2008 to August 14, 2014. Claimant lived and worked for the employer in Oregon.

(2) Claimant's brother and his brother's wife lived in Alaska. Claimant's brother was diagnosed with cancer, and required full time care. His wife worked during the day, and they could not afford to have her quit work to care for him during that time. Nor could they afford to pay someone to care for him while she was at work. Claimant was single with no children, and lived much closer to his brother than other family members. Claimant was the only one available to care for his brother.

(3) Claimant requested a leave of absence to care for his brother. Claimant's request was denied, but he was told the employer would rehire him if and when he returned from Alaska.

(4) Claimant quit work to move to Alaska to care for his brother.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause to quit work.

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) (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. 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 Hearing Decision 14-UI-28795, the ALJ concluded that claimant did not quit work with good cause under OAR 471-030-0038(5)(g) because his brother was not a member of his immediate family, as defined under OAR 471-030-0038(1)(f), and he therefore did not quit work due to compelling family reasons, as defined under OAR 471-030-0038(1)(e).¹ The ALJ also concluded that claimant did not quit work with good cause under OAR 471-030-0038(4), summarily finding that claimant did not “face a grave situation that left him no reasonable alternative but to quit work.”²

We agree with the ALJ that claimant did not quit work with good cause under OAR 471-030-0038(5)(g). However, we disagree with the ALJ’s conclusion that claimant did not quit work with good cause under OAR 471-030-0038(4). It is undisputed that claimant’s brother required full time care, and that his wife could not afford to pay for someone to care for him while she was at work, let alone quit work to care for him full time. It also is undisputed that claimant, who was single with no children and lived much closer to his brother than other family members, was the only one available to care for his brother. It also is undisputed that the employer did not accommodate claimant’s request for time off to care for his brother. Under those circumstances, we find that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work to care for his brother. No such person would have continued to work for his employer for an additional period of time.

Claimant quit work with good cause. He is not disqualified from receiving benefits based on his work separation from the employer.

¹ Hearing Decision 14-UI-28795 at 2.

² *Id.*

DECISION: Hearing Decision 14-UI-28795 is set aside, as outlined above.³

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

DATE of Service: January 12, 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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³ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.