

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1916

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On October 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 124758). Claimant filed a timely request for hearing. On November 18, 2014, ALJ S. Lee conducted a hearing, and on November 26, 2014 issued Hearing Decision 14-UI-29436, affirming the Department's decision. On December 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted a written argument, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) City of Nyssa employed claimant as a police officer from January 3, 2011 to September 18, 2014. Claimant's duties included acting as the employer's school resource officer and its evidence technician.

(2) In February 2014, claimant and his wife divorced. On or about June 3, 2014, claimant's ex-wife told claimant he was supposed to care for their daughter that evening because his ex-wife was working. Claimant was scheduled to work, but asked his supervisor for the evening off to care for his daughter. The request was granted, and claimant stayed home with his daughter. However, claimant's ex-wife complained to the local sheriff's department that claimant had their daughter in violation of the custody order from their divorce. The sheriff's department informed the employer. The employer's police chief asked the Oregon State Police (OSP) to investigate whether claimant was in contempt of court through custodial interference.

(3) The employer placed claimant on paid administrative leave, during which the employer required claimant to remain at home from 8:00 a.m. to 5:00 p.m. on weekdays unless he had the police chief's permission to leave. The employer also removed claimant from acting as its school resource officer and

evidence technician. While on paid administrative leave, claimant filed an initial claim for unemployment insurance benefits, but did not file weekly claims for benefits. On one occasion, he traveled to Boise, Idaho on a weekday with the police chief's permission.

(4) In mid-July 2014, OSP completed its investigation into whether claimant was in contempt of court through custodial interference on June 3, 2014. The county district attorneys' office declined to press charges against claimant. The employer conducted an internal investigation, and on July 21, 2014 gave claimant a letter of reprimand for allegedly misleading his supervisor when requesting June 3, 2014 off from work, and "openly and knowingly potentially violating" the custody order from his divorce. Transcript at 23. Claimant responded to the letter of reprimand by filing a grievance against the employer through his union.

(5) The police chief asked OSP to investigate whether claimant filed a fraudulent claim for unemployment insurance benefits in June 2014. OSP completed its investigation, and the county district attorney again declined to press charges against claimant. The employer began an internal investigation to determine whether claimant's conduct violated employer policies. On or about September 9, 2014, claimant met with the detective conducting the investigation, who questioned claimant about what he did when he traveled to Boise with the police chief's permission.

(6) Claimant's union representative estimated that it would be early 2015 before claimant returned to work from paid administrative leave. On September 15, 2014, claimant told his union representative that he intended to resign. On September 18, 2014, claimant quit work.

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 because, based on the employer's treatment of him while on paid administrative leave, he no longer trusted the employer to treat him fairly when he returned to work. Transcript at 6, 8-9, 19. However, claimant quit work several months before he expected to return to work from paid administrative leave. Claimant failed to show that no reasonable and prudent person would have remained on paid leave and attempted to resolve the situation by continuing to pursue his grievance against the employer and cooperate with its internal investigation. Absent such a showing, 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.

DECISION: Hearing Decision 14-UI-29436 is affirmed.

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

DATE of Service: February 4, 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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