

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0037

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 155041). Claimant filed a timely request for hearing. On January 6, 2015, ALJ Clink conducted a hearing, and on January 9, 2015, issued Hearing Decision 15-UI-31597, affirming the Department's decision. On January 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Shelter Cove, a lake resort in Crescent, OR, employed claimant as a full-time reservations and store supervisor from September 8, 2006 to October 15, 2014.

(2) Claimant's monthly compensation of \$2,250 included local housing and utilities. Claimant's own home was located in the resort town of Au Gres, Michigan, and was occupied by a single family member who maintained it and paid utilities in return. In 2014, the family member became seriously ill and could no longer reside at the home. Claimant did not have another family member to take his place, and tried for three months without success to find someone else to occupy and maintain home under similar conditions. The home could not be rented during the winter months because the area was a summer vacation area and virtually deserted during the winter months. In addition, the home had a leaky roof and needed to be occupied for maintenance and security reasons. Claimant could not afford to pay the utilities or hire a property manager. Audio Record ~ 11:00 to 11:30. Claimant concluded that if she wanted to keep the only home she owned, she had to return to Michigan and live in it. The employer would have allowed claimant to take an unpaid leave of absence.

(3) On September 15, 2014, claimant gave the employer thirty days' notice of her intent to quit and explained that her reason for doing so was her predicament regarding her home. On October 15, 2014, claimant quit to return to Michigan and occupy and maintain her home. Claimant had not reached retirement age and did not quit for that reason.

CONCLUSIONS AND REASONS: We disagree with the Department and ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of the evidence, that she 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 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

In Hearing Decision 15-UI-31597, the ALJ found that “claimant had an investment property in Michigan”, and decided to leave work “to protect her investment property. The ALJ found that claimant “could have requested time off work to check on the house or hired a property manager”, and concluded that claimant left work without good cause because rather than leave work when she did, claimant could have remained employed “at least until the next summer season and moved to her preferred geographic area at that time.” Hearing Decision 15-UI-31597 at 1, 2. We disagree.

Claimant’s house was not an “investment property” because it was her only home. Due to its remote location, renters were not available to rent it, particularly during the winter season. The only available family member had lived at the house essentially rent free to provide home security and basic maintenance, including protecting the interior from a leaky roof, and pay utilities. However, that individual became seriously ill and unable to stay at the home. Claimant’s take home pay was not sufficient for her to afford a property manager and pay for necessary maintenance and utilities, and although the employer’s owner asserted he would have allowed claimant time off to travel to Michigan to check in on her property, there was no evidence that beyond her annual two weeks’ vacation, the leave would have been paid. An unpaid leave of absence from work to check on the property would not have resolved the problem or improved claimant’s chances of keeping her only home. The owner confirmed the unoccupied home was the stated reason that claimant quit and commented that he did not believe she quit to retire. Audio Record ~ 19:00 to 19:20. Under the circumstances described, remaining employed “until the next summer season” was not a reasonable alternative available to claimant to quitting work when she did.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 15-UI-31597 is set aside, as outlined above.

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

DATE of Service: February 27, 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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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.