

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0058

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90121). Claimant filed a timely request for hearing. On December 30, 2014, ALJ Frank conducted a hearing, and on January 2, 2015 issued Hearing Decision 15-UI-31244, affirming the Department's decision. On January 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bend Broadband employed claimant as a sales assistant from January 14, 2013 until October 14, 2014. TDS Telecom acquired Bend Broadband sometime in 2014.

(2) In approximately late 2013, claimant's daughter, the daughter's husband and the daughter's three children relocated from North Carolina to Camarillo, California. At that time, claimant was living and working for the employer in Bend, Oregon.

(3) In mid-September 2014, claimant's daughter told claimant that the daughter's ten year-old son had told her and his biological father that he wanted to commit suicide. At that time, claimant decided that she needed to move to Camarillo to provide emotional support to her daughter's family and her grandson. Claimant did not ask the employer to allow her to take time off from work to provide this support. Claimant did not ask the employer for a leave of absence. Had claimant done so, she qualified for an unpaid leave of absence and the employer would have authorized one. Claimant did not ask for a leave of absence because she did not plan to remain only temporarily in Camarillo, but wanted to "begin a new life" there. Audio at ~16:08.

(4) On September 19, 2014, claimant gave written notice of her manager that she intended to resign effective October 10, 2014. As her reason for quitting work, claimant stated that her daughter and her daughter's family lived in Camarillo, California and she "was needed there." Audio at ~21:11. On approximately October 3, 2014, claimant learned that her daughter was pregnant with twins and the pregnancy was "high risk." Audio at ~13:44, ~15:17.

(5) On October 10, 2014, claimant left work. On October 12, 2014, claimant moved from Bend to Camarillo. After arriving in Camarillo, claimant rented a room temporarily, until she could make more permanent arrangements for housing. Claimant did not intend to live with her daughter and her daughter's family.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she 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). Leaving work with good cause includes leaving work for compelling family reasons. OAR 471-030-0038(5)(g). "Compelling family reasons" means, among other things, that the illness or disability of a member of a claimant's immediate family necessitates care by another and claimant's employer does not accommodate claimant's request for time off to provide that care. OAR 471-030-0038(1)(e)(A). The standard for determining whether good cause exists 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 her employer for an additional period of time.

Although claimant contended that she had good cause to leave work because of her grandson's emotional condition and her daughter's "high-risk" pregnancy, claimant testified that she did not know of her daughter's pregnancy when she notified the employer that she was going to leave work. Audio at ~13:44, ~15:17. Since good cause is assessed according to the reasons that actually led claimant to leave work, the focus of our analysis is claimant's concern over her grandson's well-being and not on her concern over her daughter's pregnancy. The latter concern could not have factored into claimant's decision to leave work because she was unaware of it at the time she made that decision.

While claimant's concern over her grandson's emotional health was understandable, she did not show that the "compelling family reasons" provision of OAR 471-030-0038(5)(g) applied to her situation and operated automatically to supply good cause for her decision to leave work. There was no evidence that claimant's grandson needed claimant's care due to an "illness or disability," which is required to establish the existence of a "compelling family reason." Moreover, there was no evidence that claimant sought an accommodation from the employer to care for her grandson that the employer did not allow, which is also a requisite for the applicability of the "compelling family reason" provision. Therefore, claimant did not meet the threshold criteria for establishing that a "compelling reason," within the meaning of OAR 471-030-0038(5)(g), caused her to leave work.

Even though claimant did not demonstrate that she had a "compelling family reason" for leaving work, within the meaning of OAR 471-030-0038(5)(g), she may still show good cause under the general regulatory provision of OAR 471-030-0028(4) if she had objectively "grave reasons" for leaving work. However, under the circumstances that claimant described, she did not show that her grandson needed special care that only she could provide with her actual physical presence in Camarillo or that her grandson was not receiving adequate emotional support from her daughter, her daughter's husband or the

grandson's biological father. Nor did claimant otherwise show that the emotional support and attention that she envisioned providing to her grandson was not possible through some combination of long distance communications from her originating in Oregon and temporary in-person visits to Camarillo. Under these circumstances, a reasonable and prudent employee who wanted to remain employed, exercising ordinary common sense, would not have concluded that she needed to leave work for the sake of her grandson until she had objectively determined that temporary visits to her grandson, as would be allowed using vacation time or an employer-provided leave of absence, would not, in combination with the other supports available to her grandson, provide adequate emotional support for him.

Claimant did not meet her burden to show good cause for making the decision to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-31244 is affirmed.

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

DATE of Service: March 10, 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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