

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0134

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75811). Claimant filed a timely request for hearing. On February 2, 2015, ALJ Clink conducted a hearing, and on February 4, 2015 issued Hearing Decision 15-UI-32908, affirming the Department's decision. On February 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, 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). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Rise, Inc. employed claimant from January 10, 2011 to November 17, 2014 as a direct support person for adult clients with mental disabilities.

(2) The employer had eleven residential group homes in the Salem, Oregon area, with one to four clients living in each home. The employer also provided services to some individuals in their own homes in Salem.

(3) Claimant was assigned to work in one of the employer's group homes in Salem, Oregon. On November 12, 2014, claimant and another staff person were working as direct support for a client who began to have multiple behavioral outbursts, including urinating on claimant, kicking claimant, throwing items out of a window, trying to hit staff with the items, and trying to break things. Claimant and the other staff person had to hold the client for long periods of time, causing claimant to injure his neck and back. Claimant and the other staff person called for assistance from the employer, and an assistant director arrived to assist claimant and the other staff person. The behaviors continued for four hours, until claimant's shift finally ended. Claimant had not previously experienced an incident like the one on November 12 while working for the employer, and was upset by the incident.

(4) On November 13, 2014, claimant worked a full shift with the same client, and realized he felt traumatized by the November 12 incident. Claimant's next scheduled shift was to work with the same client on November 17, 2014. Claimant felt he could no longer work with him, or even enter the residence where the client lived.

(5) If a direct support person feels uncomfortable or unsafe working with a client, the employer attempts to reassign the employees to different clients or less dangerous clients. New assignments become available often.

(6) Claimant never complained about his working conditions to the employer, and did not discuss the November 12, 2014 incident or his reaction to it with the employer. He did not report his back injury to the employer, or file a worker's compensation claim. He did not request time off from work, or ask the employer if he could be assigned to support different clients. Claimant did not discuss the November 12 incident with a medical provider.

(7) On November 17, 2014, claimant quit work because he felt he could no longer work with clients who behaved like the client on November 12, 2014.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left 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.

Claimant quit work because he felt traumatized and unsafe working with a client that engaged in aggressive behaviors toward him on November 12, 2014. Claimant's unwillingness to work with the client was objectively reasonable. However, the circumstances claimant faced were not so grave that he had no reasonable alternative to quitting work when he did. The employer had positions working with clients in their homes, and positions working with non-aggressive clients become available on a regular basis. Claimant made no attempt to address his concerns with the employer before he quit. Because claimant did not do so, he did not demonstrate that pursuing alternatives such as asking for a reassignment or taking time off work would have been futile. Claimant failed to show by a preponderance of the evidence that no reasonable person would have continued working for his employer for an additional period of time. Claimant therefore failed to establish that he quit work with good cause, and is thus disqualified from the receipt of benefits based on this work separation.

DECISION: Hearing Decision 15-UI-32908 is affirmed.

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

DATE of Service: March 23, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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