

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0180

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152734). Claimant filed a timely request for hearing. On January 29, 2015, ALJ Wyatt conducted a hearing and issued Hearing Decision 15-UI-33044, affirming the Department's decision. On February 17, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her 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 her 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) Haagen Food and Pharmacy employed claimant, last as a floral manager, from April 6, 2000 to September 8, 2014.

(2) Claimant's husband was self-employed and his business required him to travel and stay at various locations for extended periods. He also suffered from arthritis and depression. In January 2014, claimant and her husband decided to move to a warmer climate which was expected to reduce his medical symptoms. They sold their Oregon City home and purchased a home in Hawaii but did not move to Hawaii at that time. Claimant intended to maintain her employment through the employer's busy floral season and complete complex dental treatment she was undergoing in Oregon. She and her husband moved in with her parents in Newberg, Oregon to and from which she commuted to work. A Hawaii neighbor and friend monitored their vacant home while they remained in Oregon.

(3) By August 2014, claimant learned that her dental treatment would not be completed that summer as expected. She also learned that her Hawaii neighbor was selling her home and claimant did not want to

impose on her to watch her Hawaii home any longer. She decided to move in to the Hawaii home and on August 20, 2014 gave the employer notice of her intent to quit on September 8, 2014. At the time claimant quit, claimant's husband was working on a job of his in California which was not completed until the end of October 2014.

(4) On September 8, 2014, claimant quit work because she did not want to leave her Hawaii home vacant and unmonitored until her husband's California job was completed. Audio Record ~ 13:30 to 14:10.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who quits 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 to quit work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Quitting work with good cause includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g) (August 3, 2011). OAR 471-030-0038(1)(e) provides, in relevant part, that "compelling family reasons" means the need to accompany the individual's spouse or domestic partner, to a place from which it is impractical for such individual to commute, due to a change in location of the spouse's or domestic partner's employment. Otherwise, "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 alternative but to leave work. OAR 471-030-0038(4). 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 when she did because she did not want to leave her Hawaii home vacant and unmonitored until her husband's California job was completed, which did not constitute a compelling family reason under OAR 471-030-0038(1)(e). By the time she quit, her husband had not transferred his business to Hawaii and she did not quit "to accompany" him there because he did not leave California until the end of October, six or seven weeks later. Nor did claimant quit work with good cause under OAR 471-030-0038(4). She did not assert or show that she even investigated whether it would have been possible and economically feasible for her and her husband to hire a property agent in Hawaii to monitor their home while she continued to work for the employer until after her husband's California work was completed October. Claimant failed to establish that no reasonable and prudent person in her circumstances would have availed them self of that alternative and continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-33044 is affirmed.

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

DATE of Service: April 1, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.