

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0278

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114203). Claimant filed a timely request for hearing. On February 27, 2015, ALJ Triana conducted a hearing and issued Hearing Decision 15-UI-34310, affirming the Department's decision. On March 11, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer submitted argument and a new document that was not part of the hearing record. The employer failed to show that factors or circumstances beyond its reasonable control prevented it from offering the new information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing and the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Clean and Green Landscape Maintenance employed claimant from April 13, 2014 to December 11, 2014 as a landscaping maintenance worker. Claimant lived and worked for the employer in Salem, Oregon, the employer's only location.

(2) On November 30, 2014, claimant's daughter suffered a head injury in a car accident and was admitted to the intensive care unit of a hospital in Hillsboro. Claimant's daughter was 32 years old. Claimant notified the employer he would not be at work on December 1, 2014, and began staying at his son's home in Hillsboro so he could be near his daughter.

(3) On December 5, 2014, claimant met with the employer's owner and asked for additional time off from work to be with his daughter, who was still in intensive care. The employer told claimant to take as much time as he needed, but to maintain contact with the employer.

(4) On December 11, 2014, claimant quit his job because he planned to move permanently from Salem to Hillsboro to be near his daughter, who was still in intensive care. Claimant did not ask the employer

for additional time off from work, which the employer was willing to grant, depending on how much time claimant needed. On December 13, 2014, claimant's daughter's condition began to improve, and, although claimant continued to visit his daughter regularly in Hillsboro, he decided to remain living in Salem. Claimant continued to visit his daughter regularly after December 13, 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 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. Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). "Compelling family reasons" means the illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off. OAR 471-030-0038(1)(e). "A member of the individual's immediate family" includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

Claimant left work to move from Salem to Hillsboro, Oregon to be near his daughter while she was in a hospital in Hillsboro. Claimant did not quit work with good cause under OAR 471-030-0038(5)(g) because his adult daughter was not a member of his immediate family, as defined under OAR 471-030-0038(1)(f), her condition did not necessitate his care, and the employer accommodated claimant's time off requests. Therefore did not quit work due to compelling family reasons, as defined under OAR 471-030-0038(1)(e).

Claimant also failed to establish that he quit work with good cause under OAR 471-030-0038(4). Given that claimant was not providing direct care for his daughter, and did not show he had reason to believe her condition would not improve for an extended period of time, claimant failed to show by a preponderance of the evidence that he had no reasonable alternative but to move to Hillsboro permanently to be with his daughter rather than visit his daughter regularly while he lived in Salem. Moreover, claimant did not request additional time off from work on December 11, 2014, which the employer was willing to grant depending on how much additional time claimant needed. Absent a showing that claimant knew on December 11 that his daughter's condition would not improve for an extended period, and that the employer was unwilling or unable to allow claimant to miss additional work to allow him to visit his daughter, claimant failed to establish that he had no reasonable alternative but to quit work.

Claimant quit work without good cause. He is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 15-UI-34310 is affirmed.

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

DATE of Service: April 28, 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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