

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0288

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153910). Claimant filed a timely request for hearing. On March 3, 2015, ALJ K. Monroe conducted a hearing, and on March 5, 2015 issued Hearing Decision 15-UI-34590, affirming the Department's decision. On March 12, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Although claimant's written argument contained new information, EAB considered it because it was relevant and material to a determination of whether she had good cause to leave work, and the ALJ's failure at hearing to inquire into matters that would have elicited that information was a factor or circumstance beyond claimant's reasonable control under OAR 471-041-0090(2) (October 26, 2006).

FINDINGS OF FACT: (1) Safeway Stores, Inc. employed claimant as a part-time floral department clerk in its Seaside, Oregon store from April 15, 2014 until January 3, 2015.

(2) When claimant was hired, she understood she would be scheduled for approximately 32 hours of work per week, although her hours might be reduced somewhat in the fall and winter after the tourist season ended. Claimant earned \$12.41 per hour.

(3) Claimant lived in Astoria, Oregon. The distance between claimant's home and the workplace was approximately 18 miles each way. When claimant was hired, her commute took approximately 30 minutes each way. On December 2, 2014, a bridge that claimant used during her commute, which allowed her to bypass downtown Astoria, was closed for repairs until August 2015. The bridge closure required claimant to drive to work using another route that passed through downtown Astoria. The new route added approximately 6 miles to claimant's commuting distance each way, which made claimant's total one-way commuting distance 24 miles each way. The new route added approximately 15 minutes

to claimant's commuting time each way, for a total time of approximately 45 minutes. The vehicle that claimant used to commute to work averaged 20 miles per gallon. The price of gasoline averaged \$3.00 per gallon.

(4) Between November 8, 2014 and January 3, 2015, claimant worked a total of 220 hours. On average, claimant worked 27.5 hours per week during this eight week period. Claimant earned an average gross income of \$341 during those weeks.

(5) On December 19, 2014, claimant submitted written notice to the employer that she was quitting work effective January 3, 2015. The reasons claimant decided to leave work were that she did not like the additional 15 minutes each way that it took her to commute to work after the bridge was closed and she thought she was not being scheduled for enough hours of work to justify the time she was spending in commuting to work.

(6) On January 3, 2015 claimant voluntarily left work and did not return to the workplace.

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). 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 her employer for an additional period of time.

At hearing, claimant testified that one reason she left work was the increased burden of her commute after the bridge on her usual route to work was temporarily closed. Audio at ~12:43. Claimant was very clear that she considered her commute to have been "simple and easy," and presumably tolerable, before the bridge closure. Audio at ~12:50. Since the bridge was expected to reopen in August 2015, the issue becomes whether during the limited period of approximately nine months, an additional six miles to commute and an additional fifteen minutes of commute time one-way constituted a grave circumstance. It does not appear that these relatively minor increases meet that threshold. Claimant presented no evidence that she was unusually sensitive to the impacts of a commute, or that for some other reason these increases exceeded her ability to bear. Even assuming that claimant had to perform a round-trip commute between her home and the workplace, she presented no evidence that an additional twelve miles to travel round-trip or an additional thirty minutes spent in round-trip commuting time for nine months would have constituted a grave circumstances for a reasonable person of ordinary sensitivities.

In her written argument, claimant appeared to concede that around the time she left work, she was working an average of 27.5 hours per week, and was earning gross income of \$341 per week. Accepting her estimate of her expenses to commute to work as well as the withholdings from her pay, she still had approximately \$228 in net earnings from employment after withholdings and deducting her costs to commute to work. While claimant might have thought that \$228 per week in disposable income did not

justify her continuing to work, a reasonable and prudent person would not have concluded that having \$228 in disposable income – a net amount significantly exceeding the costs of working -- was a grave circumstance compelling her to quit work.

Claimant contended that the second reason she left work was due to her lack of scheduled work hours. Audio at ~6:40. While she testified that she was under the impression when she was hired that she would be scheduled for 32 hours per week, she conceded that her scheduled hours would decrease after summer was over and winter approached. Audio at ~16:07, ~17:02. Based in the information that the employer presented from its payroll records, claimant was working an average of 27.5 hours per week during the period surrounding her decision to leave work, which was in the very late fall and earl winter. It does not appear to us that the difference between the \$397 that claimant would earn if she worked 32 hours per week (32 x \$12.41) and the \$341 per week that she earned around the time that she quit (27.5 x \$12.41), or \$56, was such a discrepant amount that a reasonable and prudent person would have concluded was a grave reason to leave work. Regardless of the difference, claimant was still earning a significant amount of gross income per week, as well as a significant amount of net income after withholdings and the costs of commuting to work.

Claimant did not meet her burden to demonstrate good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-34590 is affirmed.

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

DATE of Service: April 29, 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.