

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0336

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 # 145136). Claimant filed a timely request for hearing. On February 27, 2015, ALJ Frank conducted a hearing at which the employer did not appear, and on March 6, 2015 issued Hearing Decision 15-UI-34681, affirming the Department's decision. On March 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record, and claimant did not show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Providence Health & Services-Oregon employed claimant as a medication aide from April 26, 2006 until January 3, 2015.

(2) Claimant lived with her two children who were six and three years-old. Throughout claimant's employment, she and her children lived in Hood River, Oregon. Claimant worked night shifts at one of the employer's facilities in Hood River. Claimant worked three twelve hour shifts each week.

(3) Sometime before 2015, claimant and her husband divorced. After claimant separated from her husband, she relied on her mother, her ex-husband and, on occasion, her friends to provide overnight care for her children when she worked. Claimant did not pay her mother or her ex-husband for the childcare that they provided.

(4) Sometime before 2015, claimant learned that in January 2015 her mother was going to be leaving the country and would not be able to provide overnight care for her children. After claimant was aware that her mother was leaving, she contacted a company that provided information about local childcare

providers. The company responded to her that in its list of providers there was only one in Hood River that provided overnight care for the hours that claimant needed. Claimant took her children to this provider once during the day to determine if that provider suited the children. Claimant's oldest child "didn't like it." Audio at ~14:08. Claimant did not further consider this provider as an option to care for her children after her mother had departed. Claimant relied on the information that the listing company supplied to her, and assumed that there were no other childcare providers in Hood River or nearby that could care for her children during her overnight shifts.

(5) Sometime in late 2014, claimant became concerned about the cost of childcare after she was not able to obtain free care from her mother. On December 10, 2014, claimant met with the employer's assistant administrator to ask the administrator if she could reduce her hours to part time, which she thought would reduce the costs of the paid childcare she would need after her mother left. The administrator told claimant that there were no part-time positions available as a night medication aide, but offered claimant a full-time position as a day shift medication aide. Claimant turned down that offer because the shift for that position was 5:30 a.m. to 6:00 p.m. and a daycare that claimant had previously used to care for her children was only open between the hours of 7:30 a.m. and 5:30 p.m. Claimant did not determine if other childcare providers in her local area were able to care for the children during all the hours she would work as a day shift medication aide. The administrator also offered claimant a position as a part-time residential assistant, but claimant did not accept it because it paid less than she was then earning as a medication aide and it did not include health insurance benefits for herself and her children. The administrator also told claimant that work as a relief medication aide might be available, but claimant was not interested in this position because the work was not predictable enough to allow her to make stable childcare arrangements. The administrator also offered to allow claimant to take a leave of absence to enable her to research the availability of childcare providers that might meet her needs. Claimant refused this offer because it was not a "long-term solution." Exhibit 1 at 5.

(6) On December 10, 2014, claimant submitted her written resignation to the employer's assistant administrator stating that her final day was going to be January 3, 2015.

(7) On January 3, 2015, claimant left the workplace and did not return. Shortly after, claimant moved from Hood River to Sandy, Oregon.

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.

Claimant initially contended at hearing that she left work because she was unable to locate suitable childcare to substitute for the care that her mother was providing during the night shifts that she worked. Audio at ~12:57, ~13:49. Under certain limited circumstances, a lack of childcare may present grave

circumstances for a claimant. However, while claimant did contact a childcare provider listing service to determine if there were commercial childcare providers in Hood River who were available for the overnight care that claimant needed and, if her testimony is accepted, her six year-old did not take an immediately liking to that provider, she did not allude to any objective deficiencies in the care that the provider took of either of the children. Because it is to be expected that a child may not rapidly adjust to changes in child care providers, it is not obvious that allowing a young child's instantaneous reaction to a new childcare provider to determine the suitability of that arrangement was reasonable, particularly if the number of providers was as limited as claimant suggested. Nor did claimant provide any evidence that she took any steps beyond contacting the listing service to try to locate overnight care for her children, such as confirming that the company's listings were exhaustive and that there were, in fact, no other overnight childcare providers in the Hood River area. Claimant also did not refer to any efforts to arrange with her ex-husband, the children's father, to increase the number of nights that he provided care to the children, or present any reasons why this arrangement was not feasible. Claimant's efforts to determine if suitable childcare was available and to arrange for it do not, on these facts, appear to have been reasonably comprehensive, or the efforts that a reasonable and prudent person would have made to locate the childcare that she needed to maintain her job.

The employer also made several alternatives available to claimant if she wanted to continue working rather than quitting. The reason that claimant rejected the day shift medication aide position, that based on the hours that a daycare provider who had previously provided care for her children, she assumed that the "normal" hours for the opening of most, if not all, daycare providers in Hood River was 7:30 a.m., is not supported by evidence verifying the reasonable correctness of her assumption, *i.e.*, some research to learn if there were any daycare providers open earlier and closing later in the day. While the reason that claimant turned down the relief medication aide position was understandable in light of her asserted childcare needs, the reason that claimant ostensibly rejected the residential aide position had nothing whatsoever to do with childcare arrangements, but with financial considerations that she did not establish were objectively grave. Finally, that claimant dismissed out of hand the alternative of taking a leave of absence to allow her to try to locate suitable childcare strongly suggests that she did not want to continue working, particularly given her meager efforts to search for a provider open the hours that she ostensibly needed. On this record, it appears that the employer made sincere and good faith efforts to retain claimant as an employee while satisfying her childcare needs. A reasonable and prudent person who wanted to maintain employment would have not have rejected the day shift medication aide position before searching to determine if commercial providers could care for her children during the hours that she needed, would not have turned down the residential aide position for reasons that were not grave, and would not have refused to take a leave of absence to locate suitable child care when she had made only cursory efforts to verify that none was reasonably available to her.

Viewing claimant's hearing testimony as a whole, it appears that the principal hindrance to claimant's locating childcare was likely not the availability of providers during the hours that claimant required, but the reality that she would have to pay out-of-pocket for it, rather than obtaining it free of charge from her mother and ex-husband. Audio at ~23:41, ~24:32, ~25:07, ~26:00. However, claimant presented no evidence that the costs she likely would incur to obtain childcare for her children during the hours that she worked was so great that they rose to the level of a grave circumstance. Although there certainly would be a cost to provide care for the children from a commercial provider, claimant did not show that it likely would exceed her remuneration from work or that, after paying for childcare, she would not have sufficient resources available to meet her and her children's living expenses. On these facts,

claimant did not show that the cost of commercially provided childcare was a grave reason for her to leave work when she did.

Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 15-UI-34681 is affirmed.

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

DATE of Service: May 14, 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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