

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0715

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 144515). The employer filed a timely request for hearing. On June 4, 2015, ALJ Holmes-Swanson conducted a hearing, and on June 5, 2015 issued Hearing Decision 15-UI-39651, concluding claimant quit work without good cause. On June 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was relevant and based on the record.

FINDINGS OF FACT: (1) Columbia Care Services, Inc. employed claimant as a residential associate at its crisis center from June 15, 2011 until she quit work on March 19, 2015.

(2) Claimant's job involved helping clients in crisis through the employer's intake process. During the six months preceding her decision to quit work she felt the employer was not proactive enough about safety issues.

(3) On November 18, 2014, a client used a screwdriver he had obtained to stab himself in the eye. Claimant was not present during that incident. She worried about the safety of the facility and those in the facility, including herself, and worried about clients' access to items they could use to harm themselves or others.

(4) After the November 2014 incident, the employer reviewed its safety policies and worked to implement new safety measures. Claimant thought the employer had implemented those measures and would prohibit clients' re-entry to the facility and restrict clients from bringing non-essential belongings with them to the facility. However, the employer had to balance its safety interests with the rights of its

clients, and concluded that, while the employer could ask clients to cooperate with safety measures, forcing clients' compliance would violate their rights.

(5) The supervisor understood that claimant had safety concerns. The supervisor was on call for employees most times, and encouraged employees to call police if they felt unsafe. The supervisor had, at one point, asked claimant if she was interested in transferring from the crisis center where she experienced the unsafe conditions to the residential treatment facility upstairs from the crisis center, and claimant refused. The employer had leaves of absence available and the supervisor would have supported claimant taking one. The employer also had a human resources department employees could contact about workplace problems.

(6) Between November 2014 and February 2015, claimant observed that clients were allowed to return to the facility after leaving, and were allowed to bring non-essential items with them to the facility. On February 26, 2015, claimant notified the supervisor that she had removed a magazine rack from a public area because she felt it could be used to injure someone. The supervisor told claimant that he did not have a problem with that, but that there were a lot of items that could be used in that manner, and it was not possible to "make any space completely safe no matter what we do. The supervisor also offered to discuss the issue with her if she wanted. Transcript at 31. Claimant concluded that the employer was not going to follow through on its new safety measures, and they would not improve.

(7) On March 4, 2015, claimant met with her supervisor. Claimant told the supervisor she did not feel safe, and intended to quit work. On March 6, 2015, claimant emailed a resignation to the supervisor, and quit work effective March 19, 2015.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit 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 quit work because of safety concerns. However, she did not show good cause for quitting work because she had reasonable alternatives to quitting. Claimant had the alternative of calling the supervisor or police if she developed specific safety concerns while on duty. She had the alternative of accepting the supervisor's offer to transfer her out of the crisis center where she developed concerns. She had the alternative of seeking a leave of absence or contacting the human resources department to get relief from her concerns or try to resolve them. Claimant did not pursue any of those alternatives, however, but because she "didn't have no desire to continue" because "[t]he system's broke" and "[t]hey need to wake up." Transcript at 25. Although claimant was dissatisfied with the employer's response to the November 2014 incident and continued to have generalized safety concerns thereafter, she did not

show that the alternatives of calling her supervisor or police would not resolve any specific concerns or dangers she identified, that the supervisor did not support her efforts to improve safety, for instance, by removing the magazine rack, or that accepting the supervisor's offer to move her to the residential treatment area of the facility in which she would have less contact with clients free to leave and re-enter the facility, and less contact with clients in crisis, would not have resolved her immediate concerns without necessitating that she quit work.

Because claimant did not pursue her reasonable alternatives to quitting work because of her safety concerns, she did not show that she quit work with good cause. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-39651 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: July 31, 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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