

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0749

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 75846). Claimant filed a timely request for hearing. On May 29, 2015, ALJ R. Frank conducted a hearing at which the employer failed to appear, and on June 5, 2015 issued Hearing Decision 15-UI-39616, affirming the Department's decision. On June 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2); OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Oregon Health Authority employed claimant as a mental health therapy technician from November 14, 2005 to March 30, 2015.

(2) Claimant lived in Northeast Portland Oregon and worked for the employer at a hospital seven miles from her home. Claimant worked three 13-hour 15-minute day shifts per week. The employer informed employees that the hospital was closing on March 30, 2015. The employer offered to allow claimant to continue working at a hospital in Salem, Oregon, 62 miles from claimant's home. The employer was going to require claimant to work three consecutive 7:45 p.m. to 9:05 a.m. shifts without breaks per week, Saturday evenings through Tuesday mornings. Claimant's commute was going to be over one hour each way on weekends, and close to two hours each way on weekdays.

(3) Claimant quit work because she was unwilling to work three consecutive 13-hour 20-minute graveyard shifts without breaks, and a 2 to 4-hour commute.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit work with 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 she was unwilling to work three consecutive 13-hour 20-minute graveyard shifts without breaks, and a 2 to 4-hour commute. In Hearing Decision 15-UI-39616, the ALJ concluded that claimant quit work without good cause, asserting that she could have attempted to work under those conditions and, if necessary, negotiated a more preferable schedule with shorter shifts.¹ However, claimant’s schedule would have allowed her less than nine hours to eat, sleep and otherwise recover from her first shift and 2-hour commute before leaving for her second shift, and then less than seven hours to eat, sleep and otherwise recover from her second shift and 3-hour commute before leaving for her third shift and 4-hour commute. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense would agree to work three consecutive 13-hour 20-minute graveyard shifts without breaks with so little time to recover between shifts.

As for the ALJ’s assertion that claimant could have negotiated a more preferable schedule with shorter shifts, claimant testified that that was not an option. Audio Record at 11:00-12:00. Absent evidence to the contrary, claimant established that no reasonable and prudent person would have continued to work for her employer for an additional period of time. We therefore conclude that claimant quit work with good cause, and is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-39616 is set aside, as outlined above.

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

DATE of Service: August 6, 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.

¹ Hearing Decision 15-UI-39616 at 3.

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