

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0779

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 155546). The employer filed a timely request for hearing. On June 18, 2015, ALJ L. Lee conducted a hearing, and on June 19, 2015 issued Hearing Decision 15-UI-40325, concluding claimant voluntarily left work without good cause. On June 26, 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) Industrial Tire Service employed claimant as the truck shop manager of the Portland facility from August 6, 2001 to September 28, 2014.

(2) Claimant and his wife resided in the Portland, Oregon area, and owned a home that required both of their incomes to support. Claimant's elderly parents-in-law lived in Grants Pass, Oregon. They owned a home with land that required regular upkeep. Claimant's father-in-law was 82 years old and had a heart condition and arthritis. Claimant's mother-in-law was 74 years old and had advanced dementia. Claimant's father-in-law was the sole care provider for claimant's mother-in-law, and, due to his own age and health conditions and his wife's worsening dementia, he was increasingly unable to care for her and his home and property.

(3) Claimant and his wife were the only people willing and capable of moving to Grants Pass to help claimant's parents-in-law. They decided to sell their home, purchase an RV, and park the RV on the parents-in-law's property in Grants Pass so they could care for the property and parents.

(4) Claimant's father-in-law was unwilling to leave his home. Because of her dementia, claimant's mother-in-law needed to remain in her own home for the sake of her health because she became disturbed when she was in unfamiliar surroundings, and had experienced difficulty with her condition when just visiting claimant's home in the past. Claimant sought a transfer to one of the employer's other locations in Roseburg or Medford. The employer's owner and manager were not opposed to

transferring claimant to another facility, but Roseburg was too far for someone residing the Grants Pass area to commute, and the employer did not have any openings in the Medford facility between September 2014 and June 2015.

(5) By mid-September, claimant and his wife resolved matters in the Portland area and became able to move to Grants Pass to care for his in-laws. Claimant quit work on September 28, 2014 for that reason.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant showed good cause for quitting work.

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 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 his employer for an additional period of time.

In Hearing Decision 15-UI-40325, the ALJ concluded that claimant quit work without good cause, reasoning that claimant had reasonable alternatives to quitting. Characterizing claimant’s father-in-law’s unwillingness to leave his home as an “understandable, but perhaps unrealistic, desire,” the ALJ concluded that claimant could have moved his in-laws to Portland or arranged for others to care for them in their home or an assisted living facility, or that claimant’s wife could have moved to Grants Pass without claimant or stayed there periodically to help, instead of quitting work when he did. We disagree with the ALJ that any of the listed alternatives to quitting were reasonable based on this record.

There is no evidence in this record that claimant’s father-in-law’s desire to remain in his home as his health declined with age was unrealistic, particularly given that the father-in-law did not participate in the hearing or present evidence about the basis of his desire to remain in the home or about factors that would make that desire realistic or unrealistic. The ALJ presumed other facts that are not in the record, specifically, that claimant had the legal right at the time of the work separation to make decisions on behalf of his in-laws with respect to their residence or health care, let alone the right to force them to leave their home to move across the state or into assisted living if they did not want to do so. The presumption also ignores the evidence claimant’s mother-in-law could not, as a practical matter, move out of her home, because of the negative effects unfamiliar surroundings had on her health. For those reasons, any alternative premised on claimant removing his in-laws from their home cannot be considered reasonable.

With respect to the other alternatives, all of which were premised on the idea that claimant could remain in Portland indefinitely waiting for a transfer while others cared for his in-laws, the record shows that those were unreasonable, as well. Claimant and his wife were not financially capable of supporting their home if he and his wife did not both work and contribute to supporting the household, making it impracticable for claimant’s wife to move to Grants Pass alone while claimant continued to work in the Portland area, and, more likely than not, equally impracticable for claimant’s wife to take extended

periods of time off work and finance travel to Grants Pass to provide periodic assistance, which also suggests that claimant and his wife were probably incapable of affording to pay for in-home care for claimant's in-laws. Moreover, the record does not show that hiring help or providing periodic assistance was sufficient, given that the evidence shows that claimant's mother-in-law needed assistance with activities of daily living including standing up and bathing.

At the time claimant left work, it appears that his only options were to either remain in the Portland area with his wife and leave his elderly, ailing in-laws without assistance, or to quit his job to move to Grants Pass to help care for them. We conclude that, on this record, no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working for the employer under the circumstances of this case. Although claimant's reasons for quitting his job were purely personal, he nevertheless showed good cause for quitting when he did. Claimant is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 15-UI-40325 is set aside, as outlined above.

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

DATE of Service: August 10, 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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