

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0880-R

*Hearing Decision 15-UI-41371 Affirmed on Reconsideration
Disqualification*

PROCEDURAL HISTORY: On May 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 172041). Claimant filed a timely request for hearing. On July 8, 2015, ALJ R. Davis conducted a hearing, and on July 10, 2015 issued Hearing Decision 15-UI-41371, affirming the Department's decision. On July 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On July 28, 2015, EAB issued Employment Appeals Board Decision 2015-EAB-0880, affirming Hearing Decision 15-UI-41371. On August 11, 2015, claimant filed a request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

EAB considered the entire hearing record and claimant's argument in support of her request for reconsideration to the extent it was relevant and based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-41371 is affirmed on reconsideration. Claimant quit work without good cause, and is disqualified from receiving benefits based on her work separation from the employer.

A party may request reconsideration to correct an error of material fact or law. OAR 471-041-0145 (October 29, 2006). In the present case the material fact is that claimant quit work due to health issues after being informed in writing that her request for FMLA leave was not approved because she did not submit documentation to certify the leave.¹ Transcript at 15-26, 27-29; Exhibit 1. Based on that finding, EAB concluded that claimant quit work without good cause² because she had the reasonable

¹ *See* Hearing Decision 15-UI-41371 at 2, Finding of Fact 5, adopted by EAB on *de novo* review pursuant to ORS 657.275(2).

² 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

alternative of continuing the process of seeking FMLA leave, and the record failed to show that it would have been futile for claimant to provide documentation to certify the leave.³ Claimant did not assert that EAB erred in its finding, and the record fails to show that that it would have been futile for claimant to continue the process of seeking FMLA leave by providing documentation to certify the leave. *See* Transcript at 29. Claimant therefore failed to establish that EAB erred in concluding that claimant quit work without good cause. Claimant is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-41371 is affirmed on reconsideration.

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

DATE of Service: August 20, 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.

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.

³ *See* Hearing Decision 15-UI-41371 at 2, adopted by EAB on *de novo* review pursuant to ORS 657.275(2).