

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1077

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 91729). Claimant filed a timely request for hearing. On August 14, 2015, ALJ Logan conducted a hearing, and on August 18, 2015 issued Hearing Decision 15-UI-43138, affirming the Department's decision. On September 8, 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) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Rebound Physical Therapy last employed claimant as an acupuncturist from June 22, 2012 to June 19, 2014.

(2) Claimant worked for the employer in Bend, Oregon, where she lived with her husband and their son. In 2012, claimant and her husband separated. In October 2013, they divorced and agreed to joint custody of their 5 year old son, and a shared parenting plan. That same month, claimant's husband, who was a professional photographer, was permanently laid off from work by his employer.

(3) Claimant's ex-husband had difficulty finding photography work in Bend, and found it necessary to travel out of town for work to "make ends meet." Exhibit 1 at 2. In January 2014, he decided to establish a photography business in Truckee, California, over 400 miles from Bend, because Truckee had a larger population and was closer to an international airport. Claimant's ex-husband asked claimant to relocate to Truckee so that they could continue co-parenting their son.

(4) In March 2014, claimant decided to move to Truckee at the same time as her husband so that her son would remain near his father. Claimant also feared that if she did not move to Truckee, her ex-husband might file for physical custody of their son and, if successful, take their son with him to Truckee.

Claimant was not licensed to practice acupuncture in California. She intended to live off her savings in Truckee until she had studied for, took and passed the licensing exam in March 2015.

(5) On June 19, 2014, claimant quit work, and moved to Truckee in late June or early July 2015. Claimant failed to pass the licensing acupuncture licensing exam in March 2015, and applied to take the exam again in March 2016.

CONCLUSIONS AND REASONS: We agree with the Department and 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 on June 19, 2014, to move from Bend, Oregon to Truckee, California so that her son would remain near his father, and because claimant feared that if she did not move, her ex-husband might file for physical custody of their son and, if successful, take their son with him to Truckee. At hearing, however, claimant admitted that she did not know whether her husband would file for physical custody of their son if she did not move to Truckee,¹ and the record fails to show he would likely have been successful and taken their son with him to Truckee. Although claimant’s desire to have her son remain near his father is understandable, it was not of such gravity that no reasonable and prudent person would have continued working for her employer rather than quit and move to a state where she would not be licensed to practice her chose profession for at least nine months. The record fails to show claimant could not have at least delayed relocating to Truckee until she obtained her license.

Claimant failed to establish that she quit work with good cause, and therefore is disqualified from the receipt of benefits.

DECISION: Hearing Decision 15-UI-43138 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: September 30, 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

¹ Audio Record at 25:30.

‘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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