

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1195

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 80930). Claimant filed a timely request for hearing. On September 23, 2015, ALJ Vincent conducted a hearing, and on September 30, 2015, issued Hearing Decision 15-UI-45159, affirming the administrative decision. On October 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) At Home Senior Solutions employed claimant as an in-home caregiver from February 2 through March 19, 2015. The employer paid claimant \$10 per hour.

(2) During the month of February, claimant worked an average of 10 hours per week for the employer. From March 1 through 19, claimant worked an average of 18 hours per week for the employer. Transcript at 22. The employer assigned claimant to work for many different clients, and also required that she use her personal vehicle to travel to these different assignments. Claimant spent an average of \$40 per week on gas needed for work-related travel. Although claimant asked the employer to provide her with a more stable schedule that would require less travel, the employer did not do so. Transcript at 5. The employer did not pre-pay claimant for her work or travel expenses. Claimant was required to pay for her fuel and other vehicle costs, and expected to be reimbursed for her fuel costs approximately two weeks after incurring the costs.

(3) Claimant did not have savings or a source of income other than her work for the employer. Claimant lived with a roommate who did not charge her rent. The roommate paid for the gas claimant needed to travel to her different work assignments, and also made claimant's \$200 monthly car payment. Transcript at 6. Claimant could not afford to pay rent, and was unable to pay for the gas she needed for work-related travel, or to make her \$200 monthly car payment.

(4) On or about March 19, 2015, claimant's roommate told her that the roommate was no longer willing to pay for claimant's gas or car, and that if she continued to work for the employer, the roommate would evict her. Claimant had no other place where she could afford to live. Transcript at 6.

(5) Claimant attempted to obtain financial help from friends and family, but was unable to get any assistance. She contacted social service agencies, but these agencies had been helping her pay for her utilities and were unable to provide her with any additional help. Claimant was not affiliated with any religious or other charitable organizations that offered financial or other assistance. Transcript at 10.

(6) On March 19, 2015, claimant called the employer and quit her job. Claimant voluntarily left work because had she not done so, she would have become homeless and would have lost the roommate's financial support.

CONCLUSION AND REASONS: We disagree with the ALJ. Claimant voluntarily left 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.

In Hearing Decision 15-UI-45159, the ALJ held that claimant failed establish good cause for quitting, reasoning that

Claimant asserts that she quit because her roommate refused to fund her transportation expenses to jobs because they were too high. However, the claimant's testimony established that she profited from her out-of-town assignments. Further, if the claimant did not travel out of town she would have been free to limit her assignments to those an area she preferred. Claimant did not establish by a preponderance of the evidence that it would be unreasonable or futile for her to continue to work for the employer within this more limited geographic area. Hearing Decision 15-UI-45159 at 4.

We disagree with the ALJ's description of the reasons why claimant quit her job, and his conclusion that continuing to work for the employer was not unreasonable. Contrary to the ALJ's assertion, the record shows that the employer was unable to provide claimant with a stable assignment that would require less travel. Transcript at 5. Claimant testified that her roommate supported her financially by allowing to live rent free, by making her \$200 per month car payment, and by paying for the gas she needed for her work-related travel. The roommate told claimant that she would be evicted and all financial support withdrawn if she did not quit her job. Claimant was unable to pay rent or make her car payment, and was not successful in obtaining help from family or friends, or additional assistance from social service agencies. Claimant

therefore faced a grave situation: had she continued to work for the employer, she would have become homeless. Under these circumstances, a reasonable and prudent person would have no alternative but to leave work.

Claimant had demonstrated good cause for voluntarily leaving work. She is not disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 15-UI-45159 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell.

DATE of Service: October 23, 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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