

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1277

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124235). Claimant filed a timely request for hearing. On September 30, 2015, ALJ Frank conducted a hearing, and on October 8, 2015 issued Hearing Decision 15-UI-45618, affirming the Department's decision. On October 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument but failed to certify that she provided a copy of that argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant's argument also contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Home Care Workers, a program of the Oregon Department of Human Services (DHS), paid claimant to perform authorized in-home services for one of its eligible clients from July 28, 2015 until July 31, 2015.

(2) The eligible client's DHS caseworker had authorized the client to receive 30 hours per month of specified services from care workers that assisted the client with activities of daily life. DHS agreed to pay the client's home care workers for the services the case manager set out on the client's "task list."

(3) Sometime on or before July 28, 2015, claimant met with the client to discuss the services she wanted claimant to provide. The client asked claimant to perform some "heavy cleaning" that the client's regular DHS care worker was unable to perform. Audio at ~6:08. The client also told claimant that that, after the cleaning was completed, she was willing to employ claimant until October 2015 to perform yard work and to assist her making preparations for a yard sale. Because yard work and tasks related to yard sales were not on the client's "task list," claimant refused to perform them because she would not

receive pay for them through DHS. Claimant agreed to perform the cleaning, which was on the client's task list. Claimant completed the cleaning on July 31, 2015 and billed DHS for 25 hours of work.

(4) After July 31, 2015, claimant performed no work for the client, although the clients wanted her to perform the yard work and yard-sale tasks so long as claimant billed DHS for that work. Claimant voluntarily left work on July 31, 2015.

CONCLUSIONS AND REASONS: 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-45618, the ALJ concluded that claimant voluntarily left work without good cause. The ALJ reasoned that, because claimant emphasized problems with her personal vehicle and the wear and tear on it resulting from the distance of her lengthy commute to provide services to the client as contributing to her decision to quit work, she must left work for that reason. Hearing Decision 15-UI-45618 at 3. The ALJ further reasoned that since claimant could have arranged her work schedule with client in a manner that consolidated her work to a few days each month and reduced the number of times she needed to commute to the client's house, she did not demonstrate that grave reasons motivated her to leave work. Hearing Decision 15-UI-45613 at 3. We disagree with the ALJ about the reason that claimant left work, and that it did not constitute good cause.

While claimant did mention that transportation issues would have prevented her from continuing to work after July 31, 2015, she was clear that she refused from the outset to perform the yard work and yard-sale tasks for the client that would have allowed her to work for the client after July 31, 2015 because those tasks were not on the client's "task list" and were not authorized by the client's case manager for DHS payment. Audio at ~6:39. Claimant was correct that yard work and like tasks are not personal care services or services that assisted the client in activities of daily life for which she would receive pay from DHS. OAR 411-034-0020(2) (December 15, 2015); OAR 411-034-0020(4)(i); Oregon Department of Human Services, Home Care Workers Guide at 1, 4, 9, at <https://apps.state.or.us/Forms/Served/se9046a.pdf>. The representative from DHS who testified at hearing agreed that claimant was not allowed to perform services that were not on the client's task list if she were to receive payment from DHS, and that yard work or preparing for a yard sale were not services authorized for DHS payment. Audio at ~19:57. Even if claimant had no transportation issues, it is likely she would have left work because she was not going to receive pay for the services that the client wanted her to provide.

On this record, it does not appear that the client intended to pay claimant out-of-pocket for performing services that were not on her task list. To the extent claimant was going to receive pay for her services,

she would therefore need to engage in a fraud on DHS. A reasonable and prudent person would have concluded that she was not going to continue working for the client if she was not going to receive pay for her work. A reasonable and prudent person, who wanted to be paid, would also have concluded that she was not going to continue working for the client if she was required to collaborate in a fraud to receive payment for her services. Claimant met her burden to show that she had no alternative but to leave work when she did.

Claimant demonstrated good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-45618 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 24, 2015

NOTE: This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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