

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1309

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130430). Claimant filed a timely request for hearing. On October 28, 2015, ALJ Triana conducted a hearing, and on October 30, 2015 issued Hearing Decision 15-UI-46881, affirming the Department's decision. On November 3, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seven Feathers Hotel & Casino Resort employed claimant to bus tables in its restaurant from December 1, 2014 until September 4, 2015.

(2) On August 24, 2015, claimant submitted a written resignation to the employer stating that her last day of work was going to be September 4, 2015. Claimant intended to move from her home in Canyonville, Oregon to attend Umpqua Community College in Roseburg, Oregon. At the time she submitted the resignation, claimant was 19 years old.

(3) The employer's original work schedule for the week ending September 6, 2015, showed claimant as scheduled to work on September 1, 2, 3 and 4, 2015. On September 1st, claimant did not report for work. On September 2nd, claimant went to the workplace with a note from her physician excusing her from work on September 1st and September 2nd. Claimant was not able to locate one of her supervisors in the workplace and gave the note to the food and beverage manager, who promised to deliver it to one of claimant's supervisors. The food and beverage manager failed to give the note to claimant's supervisors.

(4) On September 3, 2015, claimant reported for work and observed that her name had been removed from the work schedule for the week ending September 6, 2015. Claimant's supervisors had removed her name from the schedule because, having not received the physician's note from the food and beverage manager, they did not know that claimant's absences on September 1st and September 2nd were excused and they thought that, without explanation, claimant had failed to report for work on those days.

After claimant realized her name was removed from the schedule, she spoke with the assistant manager of the employer's restaurant. The assistant manager told claimant to return home and to call the supervisor later to learn if she was back on the schedule. Also on September 3rd, claimant called the employer's senior risk manager to complain about her supervisors' removal of her name from the work schedule. The senior risk manager then called the assistant manager of the restaurant and asked her to put claimant back on the schedule to allow her to work until the effective date of her resignation. The assistant restaurant manager agreed.

(5) On September 4, 2015, the assistant manager called claimant and offered her a shift of work on that day. Claimant declined to work.

(6) On September 4, 2015, in line with her written resignation, claimant voluntarily left work.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

At the outset, the sequence of events leading to claimant's removal from the employer's schedule does not change the nature of the work separation from the planned voluntary leaving that was set out in the resignation that claimant submitted to the employer on August 24, 2015. It appears that the removal of claimant's name from the work schedule ending September 6, 2015 was the result of the employer's misunderstanding about claimant's absences on September 1st and September 2nd and the failure of the food and beverage manager to pass on the physician's note excusing those absences to claimant's supervisors. When claimant contacted the senior risk manager about her removal from the schedule on September 3rd, he promptly contacted the assistant restaurant manager and she arranged to have claimant's name returned to the schedule. The unrebutted evidence in this record shows that the employer was willing to allow claimant to work up until the effective date of her resignation, and did not intend to discharge claimant prior to that day. Audio at ~26:42, ~29:10. As such, claimant's work separation was a voluntary leaving on September 4, 2015. See OAR 471-030-0038(2) (August 3, 2011).

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). In applying section (4) of this rule, a claimant who has left work to attend school cannot show good cause for leaving work unless that school attendance is required by law. OAR 471-030-0038(5)(b)(D).

Claimant testified that she left work because she needed to move to Roseburg to attend Umpqua Community College (UCC) and presumably could not commute to the workplace from Roseburg. Audio at ~8:10. Claimant's age when she quit work, 19 years old, is strong evidence that her attendance at UCC was not required by law. Claimant did not present any evidence suggesting that she was legally required to continue her education beyond the age of 18, or that she had other, grave reasons for moving to Roseburg besides pursuing further education that was not required by law. On this record, claimant did not meet her burden to show that she had good cause for leaving work to attend UCC. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-46881 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

DATE of Service: December 4, 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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