

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1361

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 83653). Claimant filed a timely request for hearing. On November 5, 2015, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on November 12, 2015 issued Hearing Decision 15-UI-47532, affirming the Department's decision. On November 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bank of America employed claimant as a sales and service specialist from June 3, 2014 to July 10, 2015. Claimant worked for the employer at its Coos Bay, Oregon branch.

(2) In 2008, claimant and her husband divorced. Under the dissolution decree, they shared joint physical custody of their two year old son, and were required to live within 60 miles of each other.

(3) In 2015, claimant and her ex-husband lived in Coos Bay. Claimant's ex-husband had remarried, and claimant was on good terms with him and his wife. Claimant's son, now nine years old, was close friends with the son of claimant's ex-husband's wife. Claimant's ex-husband attended Southwest Oregon Community College and was scheduled to graduate with an associate degree in paramedics at the end of June 2015. His wife took online courses at Oregon State University and was scheduled to graduate with a Bachelor degree in social sciences in August 2015. In the meantime, they searched for work in the Coos Bay area for after graduation but were unsuccessful. Claimant's ex-husband was from Tennessee, where there were more opportunities for people with his and his wife's education.

(4) In April 2015, claimant's ex-husband and his wife decided they wanted to move to Tennessee after he graduated at the end of June 2015. They asked claimant to move to Tennessee at the same time, and offered to pay her moving costs. Claimant's ex-husband threatened to file for sole physical custody of their son if claimant refused to join them. Claimant wanted to remain on good terms with her ex-husband and his wife, especially given that their sons were close friends, and did not want to subject her

son to a custody battle, which she feared she might lose. Claimant also feared that if she won, her ex-husband would choose to live in Tennessee without them, and her son would be separated from his father.

(5) Claimant researched school systems in Tennessee and determined that she was willing to move to Maryville, which had an excellent school system, and was close to Louisville and Knoxville. Claimant contacted employer's human resources department about a possible transfer to one of those cities in July 2015. Claimant was told that there were no sales and service specialist positions currently available, but was assured that teller positions would be available. Claimant notified her branch manager that she would be quitting work at the Coos Bay branch on July 10, 2015.

(6) On April 29, 2015, contacted the human resources department, which informed her that a sales and service specialist position was available in Tennessee. Claimant applied for a transfer, and was give no reason to believe her request would be denied. In early June 2015, however, claimant was informed that the Tennessee branch decided it could not wait for claimant to move to Tennessee, and had filled the position. However, claimant again was assured that teller positions in Tennessee would be available.

(7) In early July 2015, a human resources representative informed claimant that a teller position was available in Tennessee. On July 10, 2015, claimant's last day of work at the Coos Bay Branch, she replied that she was interested in the position, and provided her personal contact information. However, the human resources employee did not contact claimant. Claimant attempted to contact the human resources representative after July 10, 2015 but was unsuccessful.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit 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-47532, the ALJ asserted that claimant "mutually agreed" with her ex-husband and his wife to move to Tennessee and could have waited to see if her ex-husband "moved without seeking to wrest his son away from his home and mother," and, if not, had the reasonable alternative to "put her young son through the ordeal of a custody battle."¹ The ALJ further asserted that claimant "argued" she had a "good chance" for a transfer to a branch in Tennessee, but "for whatever reason she never secured the job before she gave notice or before she actually quit."² Based on those assertions, the ALJ concluded that, "While claimant's desire to maintain a family unit for her son was

¹ Hearing Decision 15-UI-47532 at 3.

² *Id.*

understandable, good cause for quitting was not established by a preponderance of the evidence, and “a disqualification from benefits is appropriate.”³

However, the record shows that claimant’s ex-husband and his wife decided to move to Tennessee, and that claimant’s ex-husband threatened to file for sole physical custody of their son if claimant refused to join them. If claimant’s husband failed to follow through on his threat and moved to Tennessee without them, claimant’s son would have been separated from his father indefinitely. If not, claimant would have subjected her son to a custody battle she feared she might lose. If she won, her ex-husband may have elected to live in Tennessee without his son, who still would have been separated from his father. Claimant did not notify her branch manager that she was quitting work at the Coos Bay branch until after the employer assured her that teller positions in Tennessee would be available. Claimant was unable to secure the sales and service specialist position in Tennessee because the employer unexpectedly filled the position in early June 2015. The employer again assured claimant that teller positions in Tennessee would be available, but did not respond after claimant expressed interest in such a position on her last day of work.

Given the negative consequences for claimant’s family if she refused to move to Tennessee, and the employer’s repeated assurances that claimant would be able to transfer there, we find that no reasonable and prudent person would have remained in Oregon and continued to work for her employer for an additional period of time. We therefore conclude that claimant quit work with good cause. She is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-47532 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell.

DATE of Service: December 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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³ *Id.*