

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1367

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 125218). Claimant filed a timely request for hearing. On October 22, 2015, ALJ Frank conducted a hearing, and on October 28, 2015 issued Hearing Decision 15-UI-46684, concluding that claimant voluntarily left work without good cause. On November 17, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) The Lakeside Water District employed claimant as a part time clerk from November 2, 2010 until January 5, 2015.

(2) Sometime prior to December 22, 2015, claimant's husband learned that his employer was going to transfer him to Medford, Oregon. Medford is located approximately 180 miles from Lakeside, where claimant and her husband were living in December 2015.

(3) On December 22, 2015, claimant notified the employer she would be quitting her job and that her last day would be January 5, 2015. Claimant told her supervisor that she was leaving her job to pursue a new job. The job that claimant mentioned to her supervisor was actually a temporary volunteer position providing bookkeeping services to some individuals. Audio Recording at 21:15. Claimant planned to look for permanent full time work in Medford. Claimant did not tell her employer about her husband's transfer to Medford because her husband had asked that claimant tell no one about the transfer.

(4) In early March 2015, claimant's husband began living with a relative in Medford. Sometime in March 2015, claimant started travelling back and forth between Medford, and her home in Lakeside. Claimant has continued to live at least part-time in her Lakeside home.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left 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.

Under OAR 471-030-0038(5)(g), an individual has good cause for leaving work if the individual quits a job for “compelling family reasons.” “Compelling family reasons” include leaving work to accompany a spouse when the location of the spouse’s work has changed to a location where it is not practicable for claimant to continue to commute to work. The record shows, however, that this exception is not applicable to claimant’s situation. Although her husband transferred to a position in Medford, claimant did not accompany him. Claimant’s former supervisor presented un rebutted testimony that claimant has continued to live at least part-time in her Lakeside home, and travels back and forth between Medford and Lakeside. Audio Recording at 19:52. We therefore conclude that claimant did not quit her job for compelling family reasons.

To the extent that claimant quit her job to pursue a new job opportunity, she failed to demonstrate good cause for voluntarily leaving work. If an individual leaves work to accept an offer of other work, good cause exists only if the new work is reasonably expected to continue, and the work pays an amount equal to or more than the weekly benefits amount, or an amount greater than the work the individual left. OAR 471-0036-0038(5)(a). Claimant’s new job is a temporary volunteer position. Finally, claimant’s desire to look for permanent full time work in Medford does not constitute good cause for quitting her job. OAR 471-0036-0038(5)(b)(A).

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-46684 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 21, 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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