

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0002

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93817). Claimant filed a timely request for hearing. On December 10, 2015, ALJ Vincent conducted a hearing at which the employer did not appear, and on December 16, 2015 issued Hearing Decision 15-UI-49449, affirming the Department's decision. On January 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he offered information that he did not present during the hearing. Claimant did not explain why he did not offer this information at the hearing or otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider the new information. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Discount Tire Co. of Oregon Inc. employed claimant from October 1, 2001 until October 9, 2015, last as a store manager.

(2) When claimant was a store manager, he worked at the employer's store in Beaverton, Oregon. Claimant lived in Salem, Oregon and his commute to work was approximately 47 miles each way, which took 45 to 55 minutes each way depending on the traffic. In total, claimant spent between an hour and a half and an hour and 10 minutes in total time commuting between his home and the Beaverton store each day. The time claimant was away from home due to working and commuting was stressful for his wife.

(3) Sometime before October 9, 2015, the employer demoted claimant from the position of store manager because of some errors claimant made. As a result of the demotion, the employer decided claimant could not continue working at the Beaverton store, and told him he was going to be assigned to

the employer's store in Gresham, Oregon. Claimant drove the route he would use to commute to Gresham from his home and discovered that it was approximately 63 miles each way which took 75 minutes each way. In total and depending on traffic, claimant anticipated he would spend at least an hour and 50 minutes in total time commuting between his home and the Gresham store. Claimant would spend more time commuting if traffic was heavy on Interstate 5 or Interstate 205, the principal arteries he would use to drive to Gresham.

(4) Sometime before October 9, 2015, claimant told his wife that his commute would be extended each day by at least approximately 40 minutes each day when he was working in Gresham. Claimant's wife told him she was going to leave him and their marriage would be ended if he accepted the transfer to the Gresham store.

(5) Claimant voluntarily left work on October 9, 2015 rather than accept the transfer to the Gresham store. Claimant quit work because he did not want to jeopardize his marriage.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

In Hearing Decision 15-UI-49449, the ALJ concluded claimant did not show good cause for leaving work. The ALJ did not address the reason that motivated claimant to leave work, which was that his wife threatened to end their marriage if his time away from home due to work was increased by the extra time required for him to commute to Gresham. Audio at ~6:08, ~9:45, ~11:52. Rather, the ALJ vaguely characterized claimant as having left work due to "frustration" over the his transfer to the Gresham store and reasoned that, in lieu of quitting, claimant had the reasonable options of working at the Gresham store until he located another job with a presumably shorter commute, or moving to the Portland area. Hearing Decision 15-UI-49449 at 2. We disagree.

Since the employer did not appear at the hearing, claimant's testimony that he believed that his marriage would be in significant jeopardy if he accepted the transfer to the Gresham store was not contested. Claimant's testimony appeared sincere and his conclusion that his marriage likely would not survive his transfer to Gresham was, on the facts as they exist in this record and his wife's statements, not unreasonable. Audio at ~6:28, ~9:48. EAB has previously held that if a claimant demonstrates facts sufficient to show that his or her marriage will likely end unless he or she leaves a job, it may be good cause to leave that job. *Appeals Board Decision 2013-EAB-2155*, February 6, 2015.

The alternatives the ALJ cited to support his conclusion that claimant did not show good cause are not supported by the record. Although claimant could conceivably have accepted the transfer to Gresham

and continued to work until he located another job closer to his home, this would not have eased the gravity of his situation or protected the longevity of his marriage. He would still have been required to undertake for an indefinite period the very commute that jeopardized his marriage, with no strong guarantee that his wife would not leave him before he found another job. Although claimant conceivably could have relocated to Portland, there was no evidence in the record that his wife would agree to do so as a means to save their marriage or otherwise. There is also insufficient evidence to show that this option was reasonable or feasible. On this record, a reasonable and prudent store manager who reasonably believed, as claimant did, that his marriage would not survive if he undertook the lengthy commute required by transferring to Gresham would have left work rather than continuing to work for the employer at its Gresham store.

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

DECISION: Hearing Decision 15-UI-49449 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 27, 2016

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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