

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0094

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135100). Claimant filed a timely request for hearing. On January 12, 2016, ALJ S. Lee conducted a hearing, and on January 15, 2016 issued Hearing Decision 16-UI-51236, affirming the Department's decision. On January 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant provided home care and caregiving services to an eligible client through the Home Care Workers Program in the Oregon Department of Human Services (DHS) from June 1, 2014 until October 15, 2015. Although the client hired claimant and had the authority to set her hours and discharge her, claimant reported her hours to and was paid through the Home Care Workers Program. Claimant was a registered with the Home Care Workers Program to provide services to its clients.

(2) Sometime before approximately mid-August 2014, claimant attended a four-hour orientation offered by the Home Care Workers Program. Although the Home Care Workers Program intended one topic covered in the orientation would be informing caregivers that they should contact the client's case manager if issues arose with the client during employment, claimant did not receive that information during her orientation.

(3) Throughout her employment, the client and her husband asked claimant to report more hours than she actually worked to the Home Care Workers Program. The client and her husband were concerned that if Home Care Workers received information that clients' caregivers were working fewer hours per month than the hours the program had allotted, the client's needs would be re-evaluated and fewer hours authorized for home care services. As time went by, the client and her husband insisted claimant report more hours than she worked. When claimant refused, the client and her husband began to threaten

claimant that she would be discharged if she did not comply. The client and her husband similarly demanded of another caregiver who worked for the client that she falsify her hours to ensure the client retained her allotted service hours through the Home Care Workers Program.

(4) In August 2015, claimant informed the client and her husband that she intended to take a second caregiving job because she needed the additional income. The husband became angry and “yelled” at claimant that she did not ask for permission to take the second job and she had agreed she would not work for anyone else at the same time she worked for the client. Audio at ~10:11. Although the client was present during this interaction, she did not intervene or disagree with her husband. Claimant told the husband that she had not agreed to forego any other employment during the time she worked for the client. In response, the husband yelled at claimant that “he owns everything in the house and that meant he owned the caregivers as well.” Audio at ~10:20.

(5) Shortly after the disagreement with the husband, claimant asked another caregiver who also worked for the client to explain to the client and her husband why she needed to take the second job and that they could not prevent her from doing so. When the other caregiver tried to discuss these issues with the husband, he “yelled” at her and did not listen. Audio at ~10:33, ~31:56. Before the argument with the husband, claimant had been working approximately 98 hours per month. After the argument, the client scheduled claimant to work only 80 hours per month. This reduction in hours caused financial difficulties for claimant.

(6) On September 17, 2015, claimant gave the client notice she intended to quit on October 1, 2015. In response, the client asked claimant to continue working and, when claimant refused, the client asked her to continue until the client’s granddaughter could be authorized to provide services through the Home Care Workers Program. Claimant agreed. After claimant notified the client of her intention to quit, the client and her husband ceased asking the other caregiver to falsify her hours.

(7) On October 15, 2015, claimant voluntarily left work.

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 16-UI-51236, the ALJ concluded claimant left work without good cause. The ALJ reasoned that, although claimant’s testimony was sincere, she did not demonstrate that she had no reasonable options to leaving since she could have spoken to the client’s Home Care Workers case manager about the actions and demands of the client and her husband and perhaps the case manager would have intervened. Hearing Decision 16-UI-51236 at 3. The ALJ also reasoned that, despite the

client and her husband's increasingly insistent demands that claimant falsify the hours that she worked, claimant had the apparently reasonable option of continuing to work and to submit accurate time records despite the pressures exerted by the client and her husband. Hearing Decision 16-UI-51236 at 3. We disagree.

With respect to the option of contacting the Home Care Workers Program case manager about their treatment of her and their demands, the ALJ ignored claimant's sincere testimony that she was not aware of that method of addressing her concerns, she did not recall that contacting the client's case manager about problems was a topic addressed in the orientation that she attended and she was not familiar with the client's case manager and had never contacted the case manager about anything. Audio at ~11:11, ~13:50, ~16:52, ~17:56, ~18:02. The witness from the Home Care Workers Program did not present evidence at hearing disputing that the topic of contacting the case manager might not have been a part of the orientation that claimant attended, or assert that claimant should have been in contact with the client's case manager as a matter of course. On this record, the preponderance of the evidence shows that claimant was not aware, and should not reasonably have been aware that going to the case manager to seek a remedy for her problems with the client and her husband was an option. Because claimant was not aware of that option, it was not a reasonable alternative for her to leaving work.

The ALJ's decision also did not properly weigh the evidence about the pressure exerted on claimant by the client and her husband's behaviors and demands, or the effect that pressure had on claimant. In August 2015, the husband tried to prevent claimant from working elsewhere, and when claimant did not agree to forego other employment, he and his wife, the client, reduced claimant's hours to an extent it caused a financial hardship, possibly to punish her for seeking other employment or for not agreeing to falsify her time records. The husband threatened claimant, yelling at her that he "owned" her. Audio at ~10:20. Subsequently, the husband and his wife became insistent that claimant falsify her time records and threatened to discharge her if she did not do so. Viewing this record as a whole, it cannot be concluded that claimant did not face a grave situation. While the ALJ downplayed the gravity of claimant's circumstances based on the fact that the client did not discharge the other caregiver for refusing to submit fraudulent time records, that caregiver testified that the client and her husband stopped pressing her to falsify her time records after claimant quit, presumably relieving the pressure to which that other caregiver was subjected. Hearing Decision 16-UI-51236 at 3; Audio at ~31:00. The record does not show that the other caregiver experienced all of the pressures that claimant experienced, or that she would not have quit if the client and her husband had not ceased exerting pressure to have her submit fraudulent time cards. Viewing this record as a whole, a reasonable and prudent caregiver who had, like claimant, been prevented from working at other jobs when she needed income, was told by the client's husband that he viewed her as his property, had her hours cut to an extent she experienced financial hardship in apparent retaliation for seeking other work and who was threatened with discharge if she did not falsify her time records to a state funded program would have concluded that she needed to leave work rather than continuing in that work environment.

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

DECISION: Hearing Decision 16-UI-51236 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell.

DATE of Service: February 17, 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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