

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0161

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84610). Claimant filed a timely request for hearing. On January 28, 2016, ALJ Frank conducted a hearing at which the employer failed to appear, and on February 5, 2016 issued Hearing Decision 16-UI-52451, affirming the Department's decision. On February 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dogs for the Deaf, Inc. employed claimant as a kennel technician from February 27, 2014 to October 30, 2015.

(2) Prior to September 18, 2015, claimant worked full time for the employer, from Wednesday through Sunday. Her husband provided childcare for their children, ages 12, 11, 8 and 5, while claimant worked, including before and after school.

(3) On September 18, 2015, claimant's husband was arrested for domestic violence against claimant, and a no-contact order was issued between claimant's husband and claimant, the alleged victim. The order prohibited claimant's husband from entering the family home or providing childcare for the children.

(4) On September 23, 2015, the employer permitted claimant to begin working only three days per week, from Wednesday through Friday. Claimant decided she could only work while her children were in school, and started routinely arriving late to work and leaving early to care for her children. The employer did not discipline claimant for missing work time, but told claimant that, "if [claimant] did not go back to full time, that [the employer] did not know what [it was] going to do." Audio Record at 12:38 to 12:42. The employer told claimant she had until October 30, 2015 to arrange for full time childcare.

(5) Claimant asked friends to watch her children, and checked with one after school program that she determined was too expensive to provide care for her children. Claimant did not contact any local

childcare referral services in her area to find childcare. Claimant also felt that she needed to be with her children because they were going through a “tough time” and did not understand the situation with her husband. Audio Record at 7:49 to 8:09.

(6) On October 16, 2015, claimant gave the employer notice that she would end her employment on October 30, 2015.

(7) On October 30, 2015, claimant voluntarily left work to stay home with her children.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude 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.

Claimant gave notice on October 16 of her intent to quit work on October 30, in part, because she thought she needed to stay home with her children since she was unable to find childcare that would have allowed her to work full time. Claimant did not show that no reasonable and prudent person would have continued to work due to lack of childcare, especially when she did not check with local childcare referral resources for childcare options that met her needs. Rather than resign when she did, claimant had the reasonable alternative of continuing to look for childcare for an additional two weeks until the employer’s deadline of October 30, 2015. In addition, claimant was able to work part time, and the employer did not tell claimant for certain what it would do if claimant was unable to return to full time work by October 30. The employer did not say it would definitely discharge claimant on that day if she were unable to secure full time childcare. Thus, claimant had the reasonable alternative of continue to work until the employer decided whether it would permit claimant to work part time after October 30.

Claimant also quit work, in part, to stay home with her children because she felt she needed to care for them after the incident with her husband. Claimant failed to show that the children exhibited symptoms as a result of the September 18 incident and the husband’s absence from the home that were of such gravity that no reasonable and prudent person would have continued working rather than caring for the children herself. Claimant had the reasonable alternative of continuing to seek safe childcare resources as long as the employer permitted her to work, and claimant did not show that the employer would have been unwilling to give her time off from work to obtain assistance such as counseling or other medical care for her children.

Claimant did not show, by a preponderance of the evidence, that she faced a situation so grave that she had no reasonable alternative but to quit work. Therefore, claimant quit work without good cause, and is disqualified from the receipt of unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 16-UI-52451 is affirmed.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, not participating.

DATE of Service: March 3, 2016

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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