

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0276

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114603). Claimant filed a timely request for hearing. On February 22, 2016, ALJ Vincent conducted a hearing, and on February 26, 2016 issued Hearing Decision 16-UI-53904, affirming the Department's decision. On March 9, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the hearing decision.

FINDINGS OF FACT: (1) The Bureau of Indian Affairs employed claimant as an advanced mathematics teacher at Chemawa Indian School from August 24, 2015 to November 25, 2015.

(2) Claimant was unable to complete her required duties, including teaching, class preparation and tutoring students in her standard contracted workday. Claimant worked some amount of overtime every day, on average she worked 9 hours and 40 minutes per day, but she sometimes worked between 11 and 12 1/2 hours in a day. The bargaining contract under which claimant worked required that claimant be given a duty-free prep period each day. The employer scheduled claimant to have some paid preparation time each day after classes ended, but claimant frequently had to help students during that time with tutoring or exams.¹ Claimant did not have a duty-free prep period.

(3) Claimant's long hours interfered with her health. Claimant felt run down all the time and felt like she had a cold that never went away. She also felt stress because of the long hours and reduced time she had available to spend with her family. Claimant had 13 years of experience as a teacher, but had never before felt that her job affected her health. Claimant spoke with her doctor about the effect her work was having on her health, and her doctor thought her health would improve if she reduced her hours.

¹ The employer had other tutors available, but they were not capable of effectively tutoring claimant's students because of the advanced subject matter claimant taught.

(4) Claimant's work hours interfered with her family life. Claimant was not able to prepare dinner for her family as she had the majority of the past 21 years, and her family did not eat nutritious meals when she did not cook. She spent less time with her husband and children. She had a short temper and on one occasion "screamed" at her husband about household chores, which was atypical behavior for claimant. Audio recording at ~29:00.

(5) Claimant's coworkers did not all have comparable schedules to claimant's. One teacher had approximately 2 hours and 15 minutes each day as designated prep periods. The two other math teachers had paid assistants to help them. Other teachers were also effectively supported by tutors. Claimant spoke with another teacher about her hours. The teacher told claimant that she just had to find the time to get it all done. Exhibit 1.

(6) On September 17, 2015, claimant spoke with the school's principal about her long hours and to try to identify ways to reduce her hours. At the end of the meeting, claimant said she could not continue to work without a duty-free prep period. The principal said she could not provide one to claimant, and told claimant that claimant had to provide a 60-day notice period if she quit in order to avoid having her resignation affect her teachers' license status.

(7) On September 28, 2015, claimant gave 60-days' notice of her intent to resign. Claimant's work schedule did not change during that period, and claimant continued to experience ill health. Effective November 27, 2015, claimant quit work.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude claimant showed good cause for quitting work.

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-53904, the ALJ concluded that claimant quit work without good cause. The ALJ concluded that claimant had reasonable alternatives to quitting work that included "simply continuing to work for the employer, consulting with her principals and other teachers to identify ways in which to reduce her work hours," making "efforts to see if her working conditions improved or she became accustomed to the work environment and it caused her less stress," continuing to "perform to the best of her ability and seen [*sic*] if his [*sic*] time management abilities improved and whether they continued to meet her employer's expectations," and "pursued discussions with the employer over her concern about the stress of her work environment." Hearing Decision 16-UI-53904 at 2-3. We disagree.

The question is not whether claimant could have continued working for the employer, the question is whether claimant showed good cause for quitting. In reaching his conclusion that claimant did not, the ALJ, notably, did not mention the effect claimant's overtime had on her health or home life. Although the ALJ suggested that claimant could work to improve her time management as an alternative to quitting, the record fails to show that claimant had time management problems, much less that they were the cause of claimant's overtime. Regarding the other alternatives the ALJ mentioned, the ALJ did not identify, and the record does not show, what, if anything, others could have identified to reduce claimant's hours, what discussions she should have pursued, or what additional efforts she should have made to reduce her hours, particularly given that claimant had already identified that the overtime was caused by the lack of a duty-free prep period, consulted with a coworker and the principal about it, and had been specifically told by the principal that she could not have a duty-free prep period.

Claimant quit work because of the effect working overtime had on her health and family life. Based on what claimant knew and reasonably should have known that the time she quit work, there were no alternatives to working overtime. Claimant was unable to rely on tutors, the employer was unable to provide her with a duty-free prep period, and her efforts to work with other teachers and the principal to figure out how to complete her duties and responsibilities to her students without working overtime failed. Claimant's health and home life suffered. Claimant felt ill every day, and her doctor suggested claimant's health would improve if her hours were reduced. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working indefinitely in a position that necessitated she work daily and sometime extreme amounts of overtime in light of the adverse effect doing so had on her health and home life. Claimant quit work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-53904 is set aside, as outlined above.²

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

DATE of Service: April 5, 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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² 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.