

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0341

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 140541). Claimant filed a timely request for hearing. On January 14, 2016, ALJ S. Lee conducted a hearing, and on January 22, 2016 issued Hearing Decision 16-UI-51521, affirming the Department's decision. On January 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On February 17, 2016, EAB issued EAB Decision 2016-EAB-0115, reversing Hearing Decision 16-UI-51521, and remanding this matter for a new hearing decision after further development of the record. On March 16, 2016, ALJ S. Lee conducted another hearing, and on March 18, 2016 issued Hearing Decision 16-UI-55382, again concluding that claimant quit working for the employer without good cause. On March 25, 2016, claimant filed an application for review with EAB.

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Jacob's Heating and Air Conditioning employed claimant from February 7, 2014 to June 25, 2015, last as a new contract coordinator.

(2) Claimant lived in Beaverton, Oregon and worked for the employer in Portland, Oregon. The employer did not have any other locations. Claimant worked for the employer full time on weekdays, earning \$16 per hour.

(3) In February 2015, claimant began a romantic relationship with Brandon Oberg, who lived in Toledo, Washington, approximately 70 miles from Beaverton and Portland. Mr. Oberg worked as a machine

operator in the logging industry for an employer located in Castle Rock, Washington. He lived in the house that he had grown up in, which he rented and was going to inherit from his father. He was responsible for maintaining the property and livestock.

(4) In early March 2015, claimant moved to Toledo and began living with Mr. Oberg. She helped pay rent, and also paid for utilities and telephone service on a joint account. In addition, she helped pay for maintenance of the property and livestock.

(5) From March 2015 through mid-April 2015, claimant commuted from Toledo to work and back on weekdays. Her daily commute was approximately 4 hours roundtrip, and cost her approximately \$22. Claimant was unwilling to continue the commute indefinitely. Mr. Oberg was unwilling to move to move significantly closer to the Portland metropolitan area given the nature of his work, and personal and family ties to Toledo. Claimant decided to remain with Mr. Oberg in Toledo indefinitely.

(6) In mid-April 2015, claimant gave the employer two weeks' notice that she was quitting work due to her commute from Toledo. In mid-May 2015, she moved the last of her belongings from Beaverton to Toledo. Claimant ultimately agreed to work until June 25, 2015 to train her replacement.

CONCLUSIONS AND REASONS: We disagree with the employer and conclude that claimant had good cause to quit working for the employer.

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). Quitting work with good cause includes, but is not limited to, quitting due to “compelling family reasons,” including the need to accompany the individual’s domestic partner to a place from which it is impractical for such individual to commute due to a change in location of the domestic partner’s employment. OAR 471-030-0038(1)(e) (August 3, 2011), OAR 471-030-0038(5)(g). Otherwise, “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). The “good cause” 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. Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

In Hearing Decision 16-UI-55382, the ALJ concluded that claimant did not quit work due to compelling family reasons under OAR 471-030-0038(1)(e) and OAR 471-030-0038(5)(g) because she had been in a romantic relationship with Mr. Oberg for only a short period of time, and there was no change in location of Mr. Oberg’s employment.¹ The ALJ further concluded that claimant quit working for the employer without good cause under OAR 471-030-0038(4) and OAR 471-030-0038(5)(f) because she

¹ Hearing Decision 16-UI-55382 at 4.

her relationship with Mr. Oberg would not have been jeopardized, even if she had not moved to Toledo, or that she could have continued the relationship by commuting to work from Toledo.²

We agree with the ALJ that claimant did not quit work due to compelling family reasons under OAR 471-030-0038(1)(e) and OAR 471-030-0038(5)(g) given that there was no change in location of Mr. Oberg's employment. However, we disagree with the ALJ's conclusion that claimant quit work without good cause under OAR 471-030-0038(4). We first disagree with the ALJ's assertion that continuing to commute to work from Toledo was a reasonable alternative. No reasonable and prudent person would continue a 700 mile, 20 hour per week commute in her own vehicle indefinitely where, as here, the cost of the commute exceeded 1/6 of her gross wages, for which she received no compensation or reimbursement. Continuing to commute to work from Toledo therefore was not a reasonable alternative to quitting.

We also disagree with the ALJ's assertion that claimant's relationship with Mr. Oberg would not have been jeopardized if she had not moved to Toledo. At the time claimant decided to remain with Mr. Oberg in Toledo indefinitely, they had been living together for over one month. Claimant helped pay rent, and paid for utilities and telephone service on a joint account. She also helped pay for maintenance of the property and livestock. Claimant and Mr. Oberg were in the early stages of a domestic partnership that clearly would have been jeopardized if claimant had returned to Beaverton. Returning to Beaverton therefore was not a reasonable option for claimant.

In sum, we conclude that the length, duration and cost of claimant's commute from Toledo to work were 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. Although the gravity of claimant's situation resulted from her decision to remain with Mr. Oberg in Toledo indefinitely, claimant had no reasonable alternative but to remain in Toledo to preserve their developing domestic partnership. We therefore conclude that claimant had good cause to quit work under OAR 471-030-0038(4) and OAR 471-030-0038(5)(f). Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 16-UI-55382 is set aside, as outlined above.³

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

DATE of Service: April 29, 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

² *Id.*

³ 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.

'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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