

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0342

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 165554). Claimant filed a timely request for hearing. On March 17, 2016, ALJ Shoemake conducted a hearing, and on March 24, 2016 issued Hearing Decision 16-UI-55719, affirming the administrative decision. On March 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) A client of Homecare Workers employed claimant as a caregiver from December 22, 2014 until January 29, 2016.

(2) Sometime in the middle of January 2016, the client's adult daughter visited the client in her home. Because the daughter did not respond when claimant greeted her, claimant asked the client's husband what he might have done to offend the daughter. The client's husband responded that claimant was gay. Claimant said: "I am?" The husband told claimant that it was because claimant wore earrings, and claimant responded that he could remove the earrings if they were causing a problem. The husband said that would be better (if claimant removed the earrings), but claimant was still gay. Claimant responded that he was not.

(3) After the conversation with the client's husband about claimant's perceived sexual orientation, the husband and other members of the client's family repeatedly made comments to claimant that indicated they believed he was gay. Claimant was very disturbed by these remarks because he thought it was inappropriate to comment about his personal lifestyle. Claimant wanted to provide the best possible care to his client and worried that the family members' remarks would interfere with his ability to do so.

(4) On January 20 and 26, 2016, claimant contacted his client's caseworker and told her that the client's family members thought he was gay. Claimant did not tell the caseworker he was disturbed by these remarks and did not ask the caseworker to take any action to try to stop the family members' comments.

(5) On January 29, 2016, claimant quit his job for the client because he was disturbed by the comments the client's family members made about what they believed to be his sexual orientation.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without 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.

Claimant quit his job because he was upset about the repeated comments made by the client's family members concerning what they believed to his sexual orientation. Claimant rightfully believed that his personal life had nothing to do with his ability to care for his client, and was concerned that the family members' remarks would interfere with his caregiving duties.

Rather than quit, however, claimant could have clearly voiced his complaints to the client's caseworker and asked that the caseworker intervene to try to remedy the situation. Had claimant complained to the caseworker, she could have talked to the client's husband and told him to stop commenting that claimant was gay. In addition, she could have separated claimant and the client's husband by telling the husband to stay away from claimant or leave the house when claimant was working with the client. Audio recording at 27:13. A reasonable and prudent person would have sought assistance from the client's caseworker before concluding that the problems he faced with the client's family members could not be solved and deciding to voluntarily leave work for the client. We therefore conclude that claimant failed to demonstrate good cause for voluntarily leaving work and is disqualified from unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-55719 is affirmed.

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

DATE of Service: April 26, 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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