

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0363

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140156). Claimant filed a timely request for hearing. On March 7, 2016, ALJ Micheletti conducted a hearing, and on March 11, 2016 issued Hearing Decision 16-UI-54892, affirming the Department's decision. On March 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) SDH Services West, LLC employed claimant as a custodian from August 25, 2015 to October 22, 2015.

(2) After claimant's first week of work, the employer scheduled him to work from 2:00 p.m. to 10:30 p.m. Claimant did not like working that shift because he preferred to spend evenings with his child. Claimant knew that he did not have enough seniority to transfer to a day shift.

(3) On October 22, 2015, claimant quit work because of his work schedule.

(4) Although claimant had concerns about his supervisor's behavior toward him, and his scrutiny of claimant's work and attendance, claimant would not have quit work if the employer had scheduled him to work during the day shift.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ 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). "Good cause" includes quitting work for compelling family reasons, which include when the illness or disability of claimant's minor child necessitates claimant's care and the employer would not accommodate his request for time off. OAR 471-030-0038(1)(e)(B) and (5)(g). 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 work because the employer scheduled him to work afternoons and evenings, which interfered with his ability to spend time with his child during the evenings. Claimant did not allege or show that his desire to spend time with his child during the evenings amounted to a grave situation, for example, that he lacked alternative means of childcare for her during his shift or that her illness or disability necessitated he care for her. In the absence of evidence that claimant's desire to spend evenings with his child was a grave situation under which no reasonable and prudent person would continue to work for the employer, he did not establish good cause for quitting work. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 16-UI-54892 is affirmed.

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

DATE of Service: April 21, 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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