

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0433

Modified
Disqualification

PROCEDURAL HISTORY: On August 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause on June 17, 2015 (decision # 92215). That decision stated that a timely request for hearing needed to be filed on or before September 3, 2015. On December 15, 2015, claimant filed an untimely request for hearing. On December 17, 2015, ALJ Kangas considered claimant's request for hearing, and issued Hearing Decision 15-UI-46921, dismissing that request as untimely, subject to reconsideration if claimant completed and filed with the Office of Administrative Hearings (OAH) the Appellant Questionnaire enclosed with the decision within 14 days after the decision was mailed. On December 26, 2015, OAH received a completed Appellant Questionnaire from claimant. On January 4, 2016, OAH issued a letter order vacating Hearing Decision 15-UI-46921 and notifying the parties it would set a hearing to consider the timeliness of claimant's request for hearing and, if appropriate, the merits of administrative decision # 92215. On February 2, 2016, ALJ Vincent convened a hearing at which claimant did not appear, and on February 17, 2016 issued Hearing Decision 16-UI-52596, dismissing claimant's request for hearing due to his failure to appear. On February 23, 2016, claimant filed a request to reopen the hearing on administrative decision # 92215. On March 24, 2016, ALJ Kangas conducted a hearing, and on March 29, 2016 issued Hearing Decision 16-UI-56017, allowing claimant's late request for hearing, reopening the hearing and concluding claimant voluntarily left work without good cause on June 5, 2016. On April 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument, but failed to certify the argument was provided to the other parties as required by OAR 471-041-0080 (October 29, 2006). Claimant's argument also proffered information that was not part of the hearing record, and he did not show that factors or circumstances beyond his reasonable control prevented him from offering that new information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider claimant's written argument or the new information he sought to present. EAB considered only information entered into the hearing record when reaching this decision.

Because no adversely affected party sought review of those parts of Hearing Decision 16-UI-56017 that allowed claimant's late request for hearing and his request to reopen, EAB has confined its review to the issue of claimant's work separation.

FININGS OF FACT: (1) Whitewater Creek employed claimant to perform maintenance tasks and yardwork from April 13, 2015 until June 17, 2015.

(2) When the employer hired claimant, claimant's wife worked for the employer as an apartment manager in its complex in Coeur d'Alene, Idaho. Claimant was hired to perform work at the complex his wife managed. At that time, claimant and his wife lived some of the time at the apartment complex in Coeur d'Alene and sometimes at their personal residence in Colbert, Washington from which they commuted together to work in Coeur d'Alene.

(3) Sometime around the end of May 2015, claimant's wife and the employer agreed she would start working at the employer's apartment complex in Sandpoint, Idaho. Claimant was given work to perform at the Sandpoint complex. Claimant and his wife began commuting to Sandpoint from their residence in Colbert.

(4) Between the end of May 2015 and June 5, 2015, claimant worked at the Sandpoint complex mowing lawns and pulling weeds. After June 5, 2015, although claimant continued to commute to Sandpoint with his wife, the employer did not assign any work to him. The employer did not pay claimant for any work performed after June 5, 2015.

(5) In early June 2015, claimant's wife began to look for work with other employers that operated apartment complexes. Sometime shortly before June 17, 2015 an employer expressed interest in hiring claimant's wife to manage an apartment complex in Bremerton, Washington, a long distance from claimant and his wife's residence in Colbert and the workplace in Sandpoint. Claimant's wife informed the employer that she and claimant would shortly be leaving work.

(6) On June 17, 2015, claimant and his wife signed work separation papers with the employer, effective immediately. Claimant voluntarily left work on June 17, 2015. Thereafter, neither claimant nor his wife reported for work at any of the employer's apartment complexes.

(7) In mid-July 2015, approximately one month after claimant left work, the potential employer in Bremerton sent claimant's wife a formal job offer. On the same day, another employer offered claimant's wife a job managing an apartment complex in Spokane. Claimant's wife accepted the job offer in Spokane and turned down the one in Bremerton.

(8) Claimant's wife started her new job in Spokane around the middle to the end of July 2015. After claimant's wife began the new job, claimant and his wife continued to reside at their residence in Colbert. Sometime in September 2015, claimant and his wife moved into a residence in the apartment complex in Spokane and gave up their residence in Colbert.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause, but disagree that the separation date was June 5, 2015 and conclude that it was June 17, 2015.

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). OAR 471-030-0038(5)(g) states that leaving work with good cause includes leaving work due to compelling family reasons. “Compelling family reasons” means, among other things, the need to leave work to accompany a spouse when the spouse’s work location has changed and the changed location makes it impractical for the individual to continue to commute to the individual’s work. OAR 471-030-0038(1)(e)(C).

In Hearing Decision 16-UI-56017, the ALJ found that claimant voluntarily left work on June 5, 2015, the last day the employer paid him for work. However, claimant did not sign separation papers from the employer until June 17, 2015. While the employer’s witnesses contended the employer had continuing work for claimant between June 6 and June 17, 2015, claimant and his wife contended the employer had no work for claimant to perform during that time and that, rather than any notice that claimant was quitting, was the reason claimant’s paid work ceased on June 5, 2015. Transcript at 36, 40, 45, 46, 54, 56, 57, 60. Notably, the employer’s witnesses did not assert that claimant ever clearly informed them he was quitting work and the effective date of his leaving before he signed the separation papers on June 17, 2015. Also notably, neither of the employer’s witnesses rebutted claimant and his wife’s testimony about the employer’s lack of work for claimant after June 5, 2015 with, for example, evidence that the employer offered claimant work during the period of June 6 through 17, 2015 and claimant refused that work. As well, the employer’s witnesses did not rebut the testimony of claimant’s wife, which appeared to be that claimant continued to commute with her to the apartment complex in Sandpoint after June 5, 2015, presumably to perform work if the employer offered it. Transcript at 46. Viewed in sum, the preponderance of the evidence shows claimant quit work June 5, 2015, and the fact that he did not perform work after June 5, 2015 was attributable to the employer’s lack of work for him and not because he was unwilling to work.

While claimant’s ultimate change in residences might appear to have been attributable to “compelling family circumstances” that arose from his wife’s new job in Spokane, such circumstances did not exist when claimant signed work separation papers on June 17, 2015. As of June 17, 2015, claimant’s wife had not received only tentative job offers. At the time claimant quit, it was not reasonably known if he and his wife would need to relocate for purposes of the wife’s employment or when. While a definite job was finally offered to claimant’s wife in mid-July 2015, one month after claimant quit work, claimant and his wife did not move for purposes of the wife’s new job until September 2015, which was two and a half months after claimant left work. On this record, claimant quit work both before he knew if he would need to accompany his wife to a new location and well before the need to move came to pass. Claimant did not meet his burden to show that he quit when he did due to compelling family circumstances existing at that time or that grave reasons otherwise motivated him to quit when he did.

Claimant quit work on June 5, 2015, but did not show he did so for good cause. Claimant is disqualified from receiving unemployment benefits beginning on June 14, 2015 (the starting date of the week in which claimant quit) until he has received remuneration from employment in an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred.

DECISION: Hearing Decision 16-UI-56017 is modified, as outlined above.

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

DATE of Service: May 19, 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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