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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0491

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 81844). Claimant filed a timely request for hearing. On April 20, 2016, ALJ Triana conducted a hearing, and on April 25, 2016, issued Hearing Decision 16-UI-58091, affirming the administrative decision. On April 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Wakenhut/G4S (the employer) employed claimant from September 5, 2011 until March 7, 2016. The employer contracts with Georgia Pacific to provide security and personnel for a Georgia Pacific facility. The employer assigned claimant to work at a Georgia Pacific facility as a clock room attendant. Claimant's duties included checking in contractors, visitors and vendors to the facility; processing mail; monitoring footage from video surveillance cameras; and taking calls from employees who were calling in to report they would be absent.

(2) During her work for the employer, claimant annually read and signed an agreement to comply with Georgia Pacific and employer policies regarding acceptable use of electronic devices. The policy prohibited copying footage from the video surveillance cameras for an employee's personal use.

(3) In February 2016, claimant noticed that a new employee was making many mistakes. Claimant reviewed past footage from the video surveillance cameras. She concluded that because the footage she reviewed showed that the employer's site manager often left the work site, the site manager was inadequately training the new employee. On February 20 and 21, 2016, claimant printed up approximately 45 pages of footage from the video surveillance system. Claimant did not believe her actions violated the employer's or Georgia Pacific's electronic usage policy because she believed was printing the video footage to show another employee's inappropriate conduct, and not for personal use. One of claimant's coworkers discovered pages of the material claimant had printed and reported what she saw to the employer's area manager.

(4) On February 25, 2016, the employer's area manager suspended claimant, pending an investigation of a potential violation of the employer and Georgia Pacific electronic usage policies.

(5) On March 7, 2016, the employer's area manager gave claimant a written warning for "copying [video surveillance camera] footage for personal use" in violation of Georgia Pacific and employer policies. The warning required that claimant read and sign a number of employer policies, placed claimant on probation for 120 days, and, effective immediately, removed her from her position as clock room attendant. The employer offered claimant a position as a security guard at the gate of the Georgia Pacific facility where she had been working; the employer had no other positions at this facility for which claimant was or could be qualified. The gate security guard was responsible for screening visitors, employers and vendors who entered the Georgia Pacific facility; documenting the arrival and departure of individuals; and checking vehicles leaving the facility for contraband. Had claimant accepted the position, she would have been required to obtain certification as an unarmed security guard from the Oregon Department of Public Safety Standards and Training (DPSST) and pay the approximate $115 cost of training needed to obtain this certification.

(6) Claimant did not want to accept the security guard position because she was uncomfortable confronting people to enforce rules; work of this type would be a "scary thing" for her. Audio recording at 19:18. She also would have been required to work alone, possibly at night, and these circumstances were frightening to her. On March 7, 2016, claimant refused the employer's offer of a position as a gate security guard and voluntarily left work for the employer.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with good cause.

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.

Claimant voluntarily left work for the employer because she was unwilling to accept a position as a gate security guard. Claimant had worked for the employer for five years in an administrative position as a clock room attendant. On March 7, 2016, the employer removed her from this job and proposed to transfer her to a position as a gate security guard, the only position available for claimant at the facility where she had been working. The job duties claimant would be expected to perform as a security guard were entirely different from those she had performed as a clock room attendant. As a security guard, claimant would have been required to enforce the employer's policies by checking in individuals entering the Georgia Pacific facility, and inspecting departing vehicles for contraband. The record fails to show that claimant had any experience in security guard work, or any experience in jobs with similar duties. Claimant was uncomfortable about and frightened by the responsibility for confronting people she would have as a security guard. We conclude that claimant faced a grave situation when the

employer indicated that the only job available to her was one for which she had no training, experience, demonstrated ability or desire to perform.

The ALJ, however, concluded that the security guard work which claimant refused to accept was suitable in accordance with ORS 657l.190, which provides that to determine whether work is suitable for a claimant, the Department must consider, among other things, the "health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual." The ALJ asserted that claimant failed to show that the security guard work was not suitable, based on these criteria. Hearing Decision 16-UI-58-91 at 4. We disagree. As discussed above, the record is devoid of evidence that claimant had any prior training or experience performing the type of work she was expected to perform as a security guard. In addition, claimant demonstrated that this work would have affected her health to some degree, because of her discomfort with and fear of the responsibilities she would have as a gate security guard. For these reasons, we conclude that the job of a security guard was not suitable work for claimant.

Finally, we find that the employer's requirement that claimant pay the $115 cost of training to obtain the certification needed to work as a security guard was unreasonable. It is unlawful or unreasonable for an employer to require that an individual pay the cost of certain procedures, if the procedure is required by the employer as a condition of continued employment. Examples include: ORS 659A306(1), which makes it an unlawful employment practice to require that an employee pay for a medical exam or medical certification needed to continue employment; and OAR 471-030-0125(6) (March 12, 2006), which provides that an employer's drug policy is unreasonable for the purpose of determining a claimant's disqualification from unemployment benefits for drug or alcohol use if the policy requires the employee to pay for a drug or alcohol test. For the same reasons these employer-imposed costs were found unreasonable or unlawful, we also conclude that the employer's requirement that claimant pay the cost of training needed to continue her employment was unreasonable.

For the reasons stated above, we conclude that claimant acted as a reasonable and prudent person would by determining that continued work for the employer in a position for which the she had no experience or training, which would require her to perform tasks she fearful of or uncomfortable in performing, and which required training that she was obligated to pay for, constituted a grave situation. Claimant had no reasonable alternative but to quit her job, since the employer refused to allow her to continue working as a clock room attendant and the only other job available to her was the security guard position.

Claimant voluntarily left work with good cause. She is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-58091 is set aside, as outlined above.

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

DATE of Service: <u>May 27, 2016</u>

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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