

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0526

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 31, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 145722). Claimant filed a timely request for hearing. On April 28, 2016, ALJ Holmes-Swanson conducted a hearing, and on April 29, 2016 issued Hearing Decision 16-UI-58503, affirming the administrative decision. On May 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Brava! Italian Eatery employed claimant as a server from November 16 through 23, 2015.

(2) At the time claimant began work for the employer, her husband and father had recently passed away. Claimant was deeply upset by the loss of these family members, and found she was too emotional to maintain the type of friendly and pleasant demeanor expected of a server. Claimant found it particularly hard to work during the Thanksgiving holiday, and believed it would be even more difficult to work during the upcoming December holidays.

(3) Claimant's supervisor proposed that claimant take a leave of absence from her job, but claimant did not pursue the offer. Claimant was unsure how much time she would need to recover from her losses, but thought she would need at least several weeks. Claimant did not believe that the employer would be willing or able to grant her a lengthy leave of absence.

(4) On November 23, 2015, claimant quit her job because her emotional problems prevented her from working. Claimant believed that it took her approximately three months from the date she quit her job to recover sufficiently from her losses so that she was able to work.

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.

In Hearing Decision 16-UI-58503, the ALJ found that because of the emotional problems she was experiencing, claimant arranged for a leave of absence from her job, but “was uncomfortable and embarrassed about returning because she was not ready to return until approximately three months later.” Hearing Decision 16-UI-58503 at 1. The ALJ also found that claimant had the alternative of attempting to return to work after her leave of absence; because she failed to do so, the ALJ held that she did not meet her burden to demonstrate that she voluntarily left work for good cause. *Id.* At 2. The record does not support the ALJ’s finding that the employer granted claimant a leave of absence, however. Claimant testified that although the employer offered her a leave of absence, she did not pursue it; instead, chose to quit her job. Audio Recording at 8:49 and 11:02. Because the ALJ never called the employer’s representative as a witness, claimant’s testimony regarding her job status on November 23, 2015 was unrebutted, and we will therefore consider whether claimant demonstrated good cause for voluntarily leaving work on that date.

The emotional distress claimant was experiencing because of the deaths of her husband and father, which made it virtually impossible for claimant to perform the duties of a server, constituted a grave situation. Although the employer offered to allow claimant to take a leave of absence, there is no evidence in the record regarding the length of leave the employer would have permitted claimant to take. Claimant was unsure how much time she would need to recover from her losses, but she believed she needed at least several weeks. Given that claimant had worked for the employer for less than two weeks on the date she quit, it is highly unlikely that a reasonable and prudent person would have concluded the employer would allow the lengthy leave of absence she required. We therefore find that it would have been futile for claimant to have pursued the alternative of taking a leave of absence from her job. *See Early v. Employment Department*, 244 Or 321, 328, ___ P3d ___ (2015) (a claimant is not required to pursue an alternative to quitting a job that would be futile). A reasonable and prudent person, who suffered from the type emotional problems that claimant suffered, would conclude that she had no alternative but to voluntarily leave work.

Claimant voluntarily left work for good cause. We note that the reasons for which she quit her job were personal and were not attributable to the employer. Claimant is not disqualified from the receipt of benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-58503 is set aside, as outlined above.

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

DATE of Service: June 7, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.