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

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0702

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 110724). The employer filed a timely request for hearing. On June 6, 2016, ALJ McGorrin conducted a hearing and issued Hearing Decision 16-UI-61098, affirming the Department's decision. On June 14, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

Although the employer submitted a written argument, it did not certify that it provided copies of that argument to the other parties as required by OAR 471-041-0080 (October 29, 2006). For that reason, EAB did not consider claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Moorehead Communications, Inc. employed claimant as a manager in one of its retail stores from December 8, 2015 until March 4, 2016. The store was located in The Dalles, Oregon.

(2) Claimant was a single mother and had three children who lived with her, a six year-old, a ten year-old and a fourteen year-old. The children attended school. The children were not sufficiently mature to care for themselves at home without adult supervision. The children stayed in day care if claimant needed to work during times when they were not in school.

(3) When the employer hired claimant, its representative told her that managers were sometimes expected to work until 8:00 or 9:00 p.m., and on Saturdays. Claimant explained she would not be able to work in the evenings and on Saturdays because she needed to provide care for her children. The employer's representative told claimant the employer would be "flexible" about the hours she was scheduled to work. Audio at ~8:19. Claimant understood the representative to mean that she would be allowed to limit her work to Mondays through Fridays from 8:00 a.m. until 5:00 p.m.

(4) After claimant was hired, she arranged for paid daycare for her children from 3:00 p.m., when they were released from school, until 5:30 p.m., when she expected to be able to pick them up. From the date of her hire until early February 2016, claimant created the work schedule for her store, and the marketing manager approved it. During this time, claimant scheduled herself to work only on Mondays through Fridays from 8:00 a.m. until 5:00 p.m. No employer representatives voiced an objection to claimant's work schedule.

(5) On approximately February 8, 2016, the marketing manager told claimant the schedule she was setting for herself violated the employer's policy on the hours it expected managers to work. That policy required managers to work one to three days per week until 8:00 or 9:00 p.m., when the store closed, and one or two Saturdays each month. Claimant told the marketing manager she could not work the evening hours or on weekends because of her children. The marketing manager told claimant she needed to begin complying with the employer's policy on managers' work hours going forward.

(6) After February 8, 2016, claimant tried to locate care for her children that would allow her to work a shift ending at 8:00 or 9:00 p.m. on some weekdays and also would allow her to regularly work one or two Saturdays each month. The daycare that was caring for the children did not have any openings available for care after 5:30 p.m. Claimant did not have any relatives living in The Dalles or in the surrounding areas that might care for the children. Claimant inquired of her friends and acquaintances in The Dalles about their availability to care for the children and none of them were willing. Claimant also posted on Facebook that she was looking for childcare for her children during the evening and weekend hours the employer expected her to work. Claimant did not locate a childcare provider through the posting. The employer did not have any positions into which claimant could transfer that had work schedules limited to Mondays through Fridays, 8:00 a.m. until 5:00 p.m.

(7) On February 16 or 17, 2016, claimant received an email from the marketing manager setting out verbatim the employer's policy for the work schedules of its managers. The email advised claimant that "going forward" her schedule was going to include two or three weekdays of working until 8:00 or 9:00 p.m., and working one or two Saturdays per month. Audio at ~23:22. After receiving the email, claimant went to speak to the marketing manager. Claimant stated that her inability to locate childcare prevented her from working evening and weekend shifts. The marketing manager said "okay," and did not express a willingness to try to accommodate claimant's scheduling needs or a desire to further discuss the matter. Audio at ~11:23.

(8) On February 18, 2016, claimant contacted the marketing manager's supervisor and explained to him that she was unable to work the evening and weekend shifts the employer desired because she could not locate childcare that encompassed those hours. Claimant told the supervisor she would need to resign if the hours she was expected to work were not adjusted. The supervisor told claimant that he and the marketing manager would look into whether they could accommodate claimant and he would get back to her.

(9) On February 18, 2016, claimant submitted her resignation to the employer, stating that her last day would be March 4, 2016 if the employer would not adjust her expected work schedule to weekdays, 8:00 a.m. until 5:00 p.m., and eliminate evening hours and Saturdays. On February 19, 2016, the marketing manager replied to claimant's emailed resignation. In the email, the marketing manager stated claimant should contact her if claimant "changed [her] mind [about quitting if her hours were not adjusted]."

Audio at ~24:20. After February 19, 2016, neither the marketing manager nor the manager's supervisor contacted claimant about changing her expected work schedule.

(10) On March 4, 2016, claimant voluntarily left work as she stated she would in the resignation letter.

CONCLUSIONS AND REASONS: 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 his employer for an additional period of time.

While the employer's witness was unwilling to state in her testimony that the employer was requiring claimant to work two or three weekday evenings per week, and one or two Saturdays on all schedules it issued after February 18, 2016, she acknowledged that claimant would receive "write-ups" if she did not after that time begin working a managerial schedule that included those evenings and weekends. Audio at ~21:01. Whatever words are used or avoided to express the employer's position, its substance was an insistence that claimant comply with its policy on managers' hours despite her parental obligations. The issue is whether the employer's insistence that claimant comply with its policy created a grave circumstance from which claimant had no alternative other than to leave work.

The employer did not suggest that claimant's children were of an age or maturity level that they did not require adult supervision when claimant was not available to care for them. Indeed, given their ages, it is a matter of common and ordinary sense that it would not be safe to allow claimant's children to stay at a location unattended and unsupervised. It was not unreasonable for claimant to conclude that a grave situation would be created if compliance with the employer's scheduling imperative required her to leave her children alone.

To avert this potentially grave situation, claimant sought to arrange for the necessary childcare that would enable her to comply with the employer's insistence that she work the hours usually required of a manager. Although claimant took the reasonable step of trying to locate available paid childcare and assaying her friends and acquaintances to determine their willingness to care for her children, these efforts were not successful in finding the needed childcare. Claimant also told both the marketing manager and the manager's supervisor of her childcare needs and her inability to locate childcare during the necessary hours, and neither one proposed an accommodation or did anything other than to take the unequivocal position that claimant needed to somehow manage to comply with the schedule expected of a manager. On this record, it was reasonable for claimant to conclude that further attempts to locate the necessary childcare would likely not yield results in the short time left before the employer's new schedule went into effect, and that it also likely would be futile to pursue further efforts to obtain a scheduling accommodation from the employer when she had already sought that from the marketing manager and that manager's supervisor. Because the employer conceded it did not have any positions

available that did not require evening or weekend work, seeking a transfer to a different job with a more accommodating work schedule was not a reasonable alternative for claimant. On balance, it appears that the schedule the employer demanded of claimant gave rise to a grave situation, and there were no reasonable alternatives to avoid that gravity that claimant had not unsuccessfully exhausted at the time she quit. On these facts, a reasonable and prudent person in claimant's circumstances would have concluded she had no alternative but to leave work.

Claimant showed good cause for leaving work when she did. She is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-61098 is affirmed.

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

DATE of Service: July 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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