

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0889

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 10, 2016 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 94107). The employer filed a timely request for hearing. On July 1, 2016, ALJ Murdock conducted a hearing, and on July 22, 2016 issued Hearing Decision 16-UI-64341, reversing the Department's decision. On July 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pepsi Cola Bottling Company employed claimant as a loader at its Eugene, Oregon facility from June 28, 2013 until November 30, 2015.

(2) Claimant's grandfather lived in California. Sometime before November 17, 2015, claimant learned that his grandfather had been diagnosed with cancer and would likely die very soon. Claimant decided to go to California and stay with his grandfather for the duration of his illness, until his death.

(3) On approximately November 17, 2015, claimant notified the employer he was quitting work effective December 1, 2015 because of his desire to be with his grandfather during his final days. At that time, claimant spoke with a representative of the employer's human resources department. The human resources representative told claimant that rather than resigning he might consider applying for a leave under the Family Medical Leave Act (FMLA) or the Oregon Family Leave Act (OFLA) to protect his job during his absence. Claimant told the representative that he did not want a leave. Claimant did not apply for a leave.

(4) Around November 30, 2015, claimant notified the employer that he was going to leave work that day and was not going to work on December 1, 2015. On November 30, 2015, claimant voluntarily left work. Shortly thereafter, claimant went to California to be with his grandfather.

CONCLUSIONS AND REASONS: 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). Leaving work for good cause includes leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). “Compelling family reasons” exist when, among other things, the illness or disability of an individual’s immediate family member necessitates care be provided by another and the individual’s employer does not accommodate the individual’s request for time off. OAR 471-030-0038(1)(e)(B). The standard for showing good cause 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.

Although the employer’s witness testified unequivocally that the human resources representative with whom claimant spoke on November 17, 2015 raised with him the option of pursuing a protected leave to enable him to maintain his job for the first twelve weeks he was gone from work to be with his grandfather, claimant’s testimony about whether such an option was raised was varying. Claimant first testified that he was under the impression that a leave was not available to him, although he was unable to explain the source of that belief and he conceded that no employer representative actually told him that. Audio at ~5:08, ~5:33, ~6:10. Claimant then testified that the possibility of a leave was never discussed with him at all, then reversed himself and testified that a leave was “very briefly” brought up when he informed the human resources representative that he was resigning, that he thought he brought that topic up, that the representative promised to do “her homework” about the availability of a leave and she never got back to him so he proceeded to leave work. Audio at ~6:12, ~6:48, ~7:17. Ultimately, claimant testified that that the human resources representative with whom he spoke on November 17, 2015 might have discussed a leave with him, that he was unable to recall whether the representative said a leave was or was not available to him in light of his grandfather’s illness, and then further testified he was “sure a leave was potentially an option” for him. Audio at ~7:26, ~10:37, ~11:56. Given the definitiveness of the testimony of the employer’s witness and claimant’s equivocal and inconsistent testimony, it appears more likely than not that the human resources representative raised the option of a leave in lieu of resignation to claimant and claimant refused to pursue that option.

If claimant quit work because he intended to provide care for his grandfather in California, by not pursuing the leave that the employer told him he might qualify for and would be available for the first twelve weeks that he was gone, claimant did not meet one of the requirements to show good cause to leave work for compelling family reasons, that is, that “the individual’s employer does not accommodate the employee’s request for time off.” See OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(5)(g). Audio at ~17:04. If claimant was not going to care for his grandfather, but wanted to be with his grandfather for other reasons during the terminal stage of the grandfather’s illness, he also did not demonstrate good cause under the general good cause provision of OAR 471-030-0038(4). Although claimant’s situation as, arguably, grave, due to his grandfather’s failing health, on these facts, no reasonable and prudent person would have quit his job without first pursuing the leave of absence the employer offered that would allow him to spend time with his grandfather without losing his job.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-64341 is affirmed.

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

DATE of Service: August 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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