

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0910

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 114059). The employer filed a timely request for hearing. On July 26, 2016, ALJ Frank conducted a hearing, and on July 29, 2016 issued Hearing Decision 16-UI-64707, concluding claimant voluntarily left work without good cause. On August 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the employer's written argument and the entire hearing record.

FINDINGS OF FACT: (1) Lincoln County School District employed claimant from December 7, 2014 to June 2, 2016.

(2) Claimant initially worked on call as a substitute teacher for the employer at different schools in the employer's district. She was permitted to refuse work assignments if she chose.

(3) Claimant had arthritis and sciatica.

(4) On April 27, 2016, claimant moved 75 miles from Lincoln City, Oregon, to Albany, Oregon to be closer to family and friends and look for work.

(5) On April 27, 2016, claimant interviewed for an 18-month position as a resource person for one of the employer's programs to support Native American students. The employer subsequently hired claimant for the position. Claimant began the new position in early May 2016.

(6) Claimant's new position required her to work in Toledo or Siletz, Oregon five days per week. Claimant's commute was approximately 65 miles each direction, approximately twice as far as if claimant had continued to live in Lincoln City.

(7) After claimant began commuting for work in May 2016, she began to experience sciatica pain in her hip that she attributed to sitting in one position while commuting. Claimant also experienced allergy symptoms, including swollen eyes, when she traveled to Toledo or Siletz. Claimant did not obtain medical treatment for the sciatica and allergies before she quit work. Claimant did not notify the employer that she was experiencing difficulties with her commute or required an accommodation.

(8) On June 2, 2016, claimant quit work due to painful sciatica exacerbated by her commute.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without 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 P2d 722 (2010). Claimant had sciatica and arthritis, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

Claimant quit work because commuting 130 miles round trip five days per week aggravated her sciatica and caused her hip pain such that she was no longer willing to commute for work. OAR 471-030-0038(5)(f) provides that, where the gravity of the situation experienced by the individual results from her own deliberate actions, the actions of the individual in creating the grave situation must be examined under OAR 471-030-0038(4) to determine whether good cause for leaving the work existed. Claimant knew that her job required her to travel from her home in Albany to locations such as Toledo and Siletz, whether it was as a substitute teacher or to perform the other position she had applied for in the Native American program. Claimant created the gravity of her own situation by moving to a new residence in Albany located 65 miles away from her job locations. Claimant moved to Albany to be nearer to her friends, family and potential jobs. However, claimant did not establish that her desire to live closer to friends and family or to find work in the Albany area was a circumstance of such gravity that she had no reasonable alternative but to move away from the employer’s school district, thereby doubling her commute and creating the situation that made it too painful for her to drive to work.

Moreover, in order to show good cause for quitting work, claimant must show she had no reasonable alternatives but to quit work when she did. Claimant did not seek medical attention or notify the employer that she was experiencing difficulties with her commute or required an accommodation. At hearing, the employer’s witness testified that had claimant notified the employer, it would have attempted to accommodate her. Audio Record at 30:15-30:45. A reasonable and prudent person with the characteristics and qualities of an individual with arthritic and sciatica would have provided the employer an opportunity to offer accommodations such as transferring her back to her substitute teacher position or modifying her work schedule to allow her to commute fewer days per week. Claimant did not show that it would have been futile to do so.

Because claimant created the grave situation she faced and quit work without having asking for assistance from the employer or showing that it was futile to do so, she has not shown good cause for quitting work. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

Claimant left work without good cause. Claimant is therefore disqualified from receipt of unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-64707 is affirmed.

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

DATE of Service: August 30, 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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