

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0939

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 without good cause (decision # 83214). Claimant filed a timely request for hearing. On July 27, 2016, ALJ M. Davis conducted a hearing, and on July 29, 2016 issued Hearing Decision 16-UI-64706, affirming the Department's decision. On August 8, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Advanced Vascular Therapy, LLC employed claimant in its billing office from February 1, 2016 to March 18, 2016.

(2) At all relevant times, claimant resided in Salem, Oregon. Claimant's son resided in California.

(3) In February 2016, claimant's son asked claimant to relocate from Salem to California to care for his newborn children and 4-year old child beginning mid-March 2016. Claimant's son's wife had to work until June 2016 and they needed help with child care until she was released from her work obligations. Claimant agreed.

(4) On March 7, 2016, claimant "turned in a notice to quit [her] job" on March 18, 2016. Audio recording at ~4:25. Claimant and the employer immediately began discussions about retaining claimant as an employee by allowing her to work remotely from California. Claimant initially agreed, and the employer began setting up claimant's computer to allow her to work from California.

(5) Claimant subsequently changed her mind about working remotely. She was concerned that she could not be able to care for her grandchildren while working. Claimant notified the employer that she did not want to work remotely.

(6) The employer indicated that it was receptive to rehiring claimant when she returned from California to Salem. Claimant asked if the employer would have work for her if they hired a replacement, and understood as a result of the conversations she had with her managers and the employer that there was plenty of work and she would have a job when she returned. Even if claimant knew the employer would not have work for her in June, however, claimant would still have left work when she did.

(7) During the last weeks of claimant's employment, claimant recruited a friend to replace herself in the billing office. On March 18, 2016, claimant resigned in accordance with her original plan.

(8) In April 2016, claimant emailed a manager to report that she was returning to Salem in June. The manager replied that the employer had hired a replacement and would not have work available for her.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

Claimant testified at the hearing that she quit work when she gave notice of her intent to resign, but, after conversations with managers and the employer's owner, she believed that her resignation had changed into a leave of absence. However, the record shows that claimant had rejected the employer's offer of continuing employment, actively participated in hiring her replacement, and, ultimately, quit work as she had planned on the effective date of her resignation notice. Although there was apparent confusion about claimant's status given the employer's efforts to retain her as a remote employee despite her resignation and willingness to rehire her, it appears more likely than not that the continuing relationship between claimant and the employer ended on March 18th when claimant resigned. Although the employer was willing to rehire claimant when she returned, there was not a continuing relationship between claimant and the employer while claimant was in California.

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). "Good cause" includes "compelling family reasons," which includes the need to care for an immediate family member due to illness or disability when the employer does not accommodate the employee's request for time off. OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(5)(g). The "good cause" 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 to care for her newborn and 4-year old grandchildren for several months to help her son and his wife while they had to work. The circumstances as claimant described do not

amount to “compelling family reasons” as that term is defined by the Department. Claimant’s son and his wife needed claimant to care for her grandchildren because of the grandchildren’s ages and their work obligations, not because the grandchildren suffered illness or disability, and there is little to suggest any of the grandchildren suffered illness or disability at the time she left to care for them. Nor, given the employer’s efforts to retain claimant as an employee, does the record suggest that the employer was unwilling to accommodate claimant’s need for time off during the period of time when she was caring for her grandchildren. Rather, the employer offered to allow claimant to work remotely, and the record does not suggest that the employer would have required claimant to work full time or maintain the office’s business hours during that period, or would not have accommodated claimant’s scheduling needs and other responsibilities. For those reasons, claimant did not have good cause based on the “compelling family reasons” rules.

Nor did claimant otherwise show good cause for leaving her employment. To the extent that claimant left work to care for her grandchildren, claimant did not show that the situation was one of such gravity that she could not have explored reasonable alternatives to leaving work, whether those alternatives included helping her son and his wife seek alternative child care options, asking the employer for time off work instead of submitting a resignation, or attempting to continue the employment relationship by working remotely as the employer desired to determine whether working remotely was feasible while she cared for her grandchildren while her son and his wife were at work. To the extent claimant might have left work based on her mistaken belief that her resignation had been changed into a leave of absence, claimant also did not show good cause based on her misunderstanding, testifying that she most likely would have temporarily moved to California to care for her grandchildren for a few months regardless whether she had to quit work in order to do so.

For those reasons explained, we conclude that claimant voluntarily left work without good cause. She is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-64706 is affirmed.

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

DATE of Service: August 29, 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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