

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0949

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 131050). Claimant filed a timely request for hearing. On July 28, 2016, ALJ Vincent conducted a hearing, and on August 4, 2016, issued Hearing Decision 16-UI-65056, affirming the administrative decision. On August 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) From August 1, 2014 until April 15, 2016, Emeritus Senior Living (now known as Brookdale Senior Living) employed claimant as dining services manager.

(2) Prior to September 2015, claimant had been living and working for the employer in Grants Pass, Oregon. Claimant lived with her domestic partner, who had schizophrenia and bipolar disorders. At times, claimant's partner suffered from the symptoms of these disorders; at other times, he was non-symptomatic. Audio recording at 14:55.

(3) In September 2015, claimant temporarily transferred to the employer's facility in Newburg, Oregon. Claimant arranged the temporary transfer so she could live with her terminally ill mother in Salem, Oregon and help her sister care for their mother. Claimant's partner remained in Grants Pass when claimant moved to Salem.

(4) In January 2016, claimant's partner began suffering from the symptoms of his disorders. Claimant began traveling to Grants Pass at least once a month to care for her partner.¹

¹ The distance between Grants Pass and Salem is 201 miles. See *Driving Distance from Salem, OR to Grants Pass, OR*. We take notice of this generally cognizable fact under OAR 471-041-0090(3) (October 29, 2006). Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten

(5) On April 4, 2016, while claimant was in Grants Pass, she was admitted to the hospital for treatment of a tooth infection. After claimant was released from the hospital, claimant determined that she needed to stay in Grants Pass to care for her partner because he was experiencing severe symptoms of his disorders. Audio recording at 14:00. Claimant contacted her supervisor, and attempted to arrange a transfer to a position with one of the employer's facilities in Grants Pass; although claimant expressed her willingness to accept a demotion, no positions were available. Claimant also talked with her sister and mother, who agreed that claimant should remain in Grants Pass.

(6) On April 15, 2016, claimant voluntarily left work for the employer to move back to Grants Pass to care for her domestic partner.

CONCLUSION AND REASONS: We disagree with the ALJ, and conclude that claimant had good cause for voluntarily leaving work for the employer.

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.

The ALJ found that claimant faced a grave situation because she could not care for her partner, who was suffering from severe symptoms of his mental disorders, and continue to work for the employer. Hearing Decision 16-UI-65056 at 2. The ALJ also found that claimant had a reasonable alternative to quitting her job, however – she could have requested that the employer grant her a leave of absence to care for her partner. Because she did not do so, the ALJ concluded that she failed to meet her burden to demonstrate good cause for quitting her job. Hearing Decision 16-UI-65056 at 3. We disagree.

Because claimant did not ask the employer for a leave of absence, OAR 471-030-0038(5)(g), which states that "good cause for leaving work includes, but is not limited to, leaving work due to compelling family reasons," does not apply. "Compelling family reasons" includes a situation where the illness or disability of an immediate family member (which includes a domestic partner)² requires that the individual care for the immediate family member "and the individual's employer does not accommodate the employee's request for time off."³ We therefore consider claimant's decision to quit her job under the general good cause standard of OAR 471-030-0038(4).

days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain part of the record.

² OAR 471-030-0038(1)(f).

³ OAR 471-030-0038(1)(e)(B).

We agree with the ALJ that claimant's situation was grave: her domestic partner was experiencing an episode in which he was suffering from severe symptoms of his disorders, and needed claimant's care. We note, however, that the gravity of claimant's situation resulted from her decision to leave Grants Pass and temporarily move to Salem. We therefore apply the provisions of OAR 471-030-0038(5)(f), which states: "[w]here the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with section (4) of this rule." In accordance with this rule, we must determine whether claimant had good cause for her move to Salem. We find that the need to help her sister care for a terminally ill mother created a grave situation for claimant, that left her no alternative but to leave Grants Pass. It would have been impractical for claimant to attempt to regularly commute 201 miles between Grants Pass and Salem. Taking a leave of absence from her job in Grants Pass would not have been a suitable alternative to moving to Salem. Because of the nature of her mother's illness, it was uncertain how long claimant would need to provide care for her mother. For these reasons, we find that claimant demonstrated good cause for her actions in moving to Salem, the actions that created the grave situation she resulted in her decision to quit her job.

We disagree with the ALJ that claimant had the reasonable alternative of responding to the gravity of her situation by requesting that the employer grant her a leave of absence to care for her domestic partner. First, the record is devoid of any evidence that the claimant knew that leave was available to her, or that the employer would have offered her leave had she requested it. *See e.g., Krahn v. Employment Department*, 244 Or App 643, 260 P3d 778 (2011) (no evidence that claimant knew that the employer offered training and mentoring to inexperienced teachers, though the employer's witness testified that these opportunities were regularly provided); *Early v. Employment Department*, 247 Or App 321, 328, ___ P3d ___ (2015) (although the employer knew that claimant was leaving her job after six months of unsuccessful efforts to resolve problems in the workplace, the employer offered her no alternative to quitting; the Court held that the employer's actions in failing to offer claimant alternatives "implicitly suggest that there were none"). Second, because the occurrence and length of the episodes during which claimant's partner suffered symptoms of his mental disorders were unpredictable, claimant would not have known how long a leave she would need to request. Nor could she be certain that a single, fixed period of leave would be sufficient to help her stabilize her partner's condition. A reasonable and prudent person, whose domestic partner suffered from the same type of mental disorders as claimant's partner, would conclude that the gravity of the situation left her no alternative but to quit her job in Salem to live with and care for her partner in Grants Pass.

Claimant voluntarily left work with good cause. She is not disqualified from receiving unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-65056 is set aside, as outlined above.

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

DATE of Service: September 13, 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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