

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1088

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 27, 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions concluding that claimant voluntarily left work without good cause (decisions # 120659 and #115755). Claimant filed timely requests for hearing. On August 23, 2016, ALJ Frank conducted a consolidated hearing, and on September 9, 2016, issued Hearing Decisions 16-UI-67272 and 16-UI-67269, affirming the administrative decisions. On September 29, 2016, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-67272 and 16-UI-67269. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1087 and 2016-EAB-1088).

FINDINGS OF FACT: (1) From June 8, 2011 until May 24, 2016, claimant worked as a caregiver for the grandson of Susan Hoyez (the employer) and performed clerical work for the employer's accounting business. Because the employer's grandson was severely disabled, the employer had power of attorney and handled all matters regarding the employment of her grandson's caregivers. Claimant was considered to have two separate employers.

(2) In May 2016, claimant accompanied the employer and her grandson to Hawaii to care for the grandson. Claimant's family vacationed in Hawaii while claimant was working there.

(3) On May 23, 2016, claimant, her family, the employer, and the employer's grandson went out to eat. Claimant, the employer and the employer's grandson returned to the condominium where the employer and her grandson were staying. Claimant got the employer's grandson out of the car and into his

wheelchair; as she wheeled him toward the condominium, the grandson began using his brakes to stop his wheelchair, which caused some minor injury to claimant's legs. Claimant asked the grandson to please stop hurting her, and told him that he would have to find someone else to care for him if he continued to hurt her. The grandson kept braking his wheelchair brakes, and claimant told the grandson that they needed to get to the condominium, get the device he used to communicate, and determine why he was upset. Audio recording at 13:34. When claimant and the grandson got to the condominium, the employer realized they were both angry and told claimant to leave and return the next day.

(4) On May 24, 2016, claimant reported for work at the condominium where the employer and her grandson were staying. Both claimant and the employer were angry about the events of the previous night, and began to argue about what had occurred. Claimant was upset by some of the statements the employer made during this argument. Because she concluded that the employer was lying about the events of May 23 and interfering with her ability to care for the grandson, claimant quit her job.

CONCLUSION 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 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 quit her job after a May 24, 2016 argument with the employer, during which the employer made statements that angered claimant and led claimant to believe that the employer was interfering with claimant's care of the employer's disabled grandson. Both parties had differing accounts of what was said during their discussion, which is understandable, given the heated nature of the argument. Even when testimony about the argument is viewed in the light most favorable to the claimant, however, it fails to demonstrate that it created a grave situation for claimant. During the May 24 argument, claimant alleged that the employer criticized the way in which claimant had handled her grandson on May 23, and made false statements about what had occurred on that day. None of the statements that the employer allegedly made, *e.g.*, repeatedly asking claimant if she was going to again threaten to leave the employer, were so negative that they would cause a reasonable person to conclude that the employer had "roadblocked" claimant's ability to care for the grandson, as claimant asserted. Audio recording at 14:33, 15:35. Nor do those statements establish that claimant faced a grave situation with respect to her job as a clerical employee at the employer's accounting business. Claimant had the reasonable alternative of asking for time off from her work for the employer, and waiting until she and the employer had sufficiently calmed down so that they could rationally discuss the events of May 23 and resolve any issues related to the grandson's care that may have arisen from that incident. Based on this record, we conclude that claimant failed to meet her burden to demonstrate that the May 24 argument with the employer created a situation so grave that it would cause a reasonable and prudent person to decide she had no alternative but to quit her jobs.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decisions 16-UI-67272 and 16-UI-67269 are affirmed.

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

DATE of Service: October 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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